TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]284

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY AND JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, &c., PLAINTIFFS IN ERROR,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED FEBRUARY 21, 1923.

(26,739)

(28,739)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 784.

T. LOUIS-SAN FRANCISCO RAILWAY COMPANY AND JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, &c., PLAINTIFFS IN ERROR,

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1 UNITED STATES OF AMERICA,
State of Missouri, ss:

Be it remembered That, heretofore, and on the 13th day of October, 1919, there was filed in the office of the Clerk of the Supreme Court of the State of Missouri a certified transcript of the judgment of the Circuit Court of Cole County, Missouri, and of the order of said circuit court granting an appeal from said judgment to the Supreme Court of the State of Missouri, in a cause between State of Missouri, ex rel. St. Louis-San Francisco Railway Company and Walker D. Hines, Director General of Railroads, Appellants, and Public Service Commission of the State of Missouri, Respondent, No. 21862, which said certified transcript of said judgment and of said order granting an appeal is in the words and figures following, to-wit:

2 STATE OF MISSOURI,
County of Cole, ss:

Be it remembered, that heretofore, to-wit, at the June Term, 1919, of the Circuit Court of Cole County, Missouri, and on the 16th day of September, 1919, it being the Twenty-sixth day of the June Term 1919, of said Court, the following proceedings were had in cause No. 4002 of the causes in said Court, styled, State of Missouri ex rel. St. Louis-San Francisco Railway Company and Walker D. Hines, Director General of Railroads, Plaintiffs, vs. Public Service Commission of the State of Missouri, Defendant.

Tuesday, September 16th, 1919.

4002.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant.

Now at this day this cause comes on for final determination, and the Court now being fully advised in the premises doth find that the orders, findings and judgment of the Public Service Commission of Missouri, are just and reasonable and ought to be affirmed.

Wherefore it is consiedred, adjudged and decreed by the court that the orders, findings and judgment of the Public Service Commission of the State of Missouri, be and they are hereby in all things affirmed and upheld.

And afterwards to-wit, on the 16th day of September, 1919, the same being the Twenty-Sixth day of the June Term 1919, of the

Circuit Court of Cole County, Missouri, the following further proceedings were had in said cause, to-wit:

3 4092.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant.

Now at this day come the plaintiffs, by their attorneys and present to the court their application and affidavit for appeal, which said application and affidavit for appeal is by the court ordered filed, which is accordingly done, and now being taken up, examined, and found sufficient, it is thereupon ordered that an appeal herein be and the same is hereby granted, said plaintiffs, to the Supreme Court of the State of Missouri.

STATE OF MISSOURI,
County of Cole, ss:

I, Martin F. Gipfert, Clerk of the Circuit Court within and for the county and State aforesaid, hereby certify that the above and foregoing is a true and correct copy of the Judgment and order granting an appeal, in the above entitled cause, as true as the same duly appears of record in my office.

Witness my hand and seal of said Court. Done at office in the City of Jefferson, Missouri, this 13th day of October, A. D. 1919.

[SEAL.] MARTIN F. GIPFERT,
Clerk Circuit Court Cole County, Missouri,
By M. F. KAUTSCH,
D. C.

4 And thereafter, to-wit, on March 22, 1920, Appellants filed herein their abstract of record, which said abstract of record is in words and figures as follows:

In the Supreme Court of Missouri, Division No. 2, April Term, 1920.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and WALKER D. HINES, Director General of Railroads, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appeal from Circuit Court of Cole County, Missouri.

Appellants' Abstract of Record.

This action was instituted in the Circuit Court of Cole County, Missouri, by appellants filing in the office of the Clerk of said court, on July 8, 1919, their petition for certiorari, or writ of review,
5 to review the decision and order of respondent in the case of Commercial Club of Mountain Grove, Missouri, v. appellants, being case No. 1960 on the docket of respondent. Said petition for certiorari, or review, was filed within thirty days after appellants' motion for rehearing was denied by respondent, which said motion for rehearing is hereinafter set out at page 62. Said petition (omitting caption and signature) is as follows:

Petition for Writ of Review.

Come now petitioners, by their attorneys, and show to the Court that petitioner, St. Louis-San Francisco Railway Company, is a corporation organized and existing under and by virtue of the laws of the State of Missouri, and that it is the lessee of, and prior to January 1, 1918, was and had been for a long time in possession of and operating, a line of railroad extending from Kansas City, Missouri, through Springfield, Missouri, and Mountain Grove, Missouri, to points in the State of Arkansas and other states, which said line of railroad is mentioned in certain proceedings hereinafter referred to instituted before the Public Service Commission of the State of Missouri; that at all the times hereinafter stated petitioner, Walker D. Hines, was, and is now, the Director-General of Railroads under the United States Railroad Administration, appointed as such by the President of the United States under authority of acts of Congress him thereto enabling; that at all the times hereinafter stated said Director-General of Railroads was, and is now, in control of and operating the lines of railroad of said St. Louis-San Francisco Railway Company in
6 the State of Missouri and in other states, and particularly said line of railroad extending from Kansas City, Missouri, through Mountain Grove, Missouri, to points in the State of Arkansas and other states, in commerce between the several states as a

common carrier for the transportation of persons and property, and as such is subject to the laws of the United States regulating and affecting interstate commerce; that respondent is the Public Service Commission of the State of Missouri, and as such is, and at all the times hereinafter stated was, exercising such powers as are provided for in the act of the Legislature of Missouri of 1913, known and designated as the Public Service Commission Act.

Petitioners further state that on or about the 21st day of February, 1919, a proceeding was instituted by complaint before respondent by the Commercial Club of Mountain Grove, Missouri, by A. F. Collier, chairman Transportation Committee, the nature and purpose of which was to require petitioners to stop their interstate passenger trains No. 105 and 106 regularly at Mountain Grove, Missouri, said proceeding being case No. 1960 on the docket of respondent.

Petitioners further state that upon the filing of the aforesaid complaint respondent took cognizance thereof and set the same for hearing at the City of Mountain Grove, in Wright County, Missouri, for March 15, 1919; that upon said hearing such proceedings were had that respondent thereafter entered an order directing petitioners to stop their southbound interstate passenger train No. 105 at Mountain Grove, Missouri, for the purpose of taking on and discharging passengers at that point, and to stop their northbound interstate
7 passenger train No. 106 at Mountain Grove, Missouri, on flag or signal, for the purpose of letting off passengers who board said train at points south of the Arkansas State line, and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri, thereby attempting to deny petitioners the right to run and operate their said interstate trains Nos. 105 and 106 through Mountain Grove, Missouri, without stopping; that said order was entered by respondent at its office in Jefferson City, Missouri, on May 26, 1919, and said order provided that it should be in full force and effect on and after the 16th day of June, 1919.

Petitioners further state that in due time they filed with respondent their motion for a rehearing, alleging therein, among other things, that respondent was without authority to make said order, and that in assuming jurisdiction in the premises in making said order, respondent acted in violation of Section 8, Article I, of the Constitution of the United States and of the laws of the United States relating to the regulation of commerce among the several states.

Petitioners further state that thereafter, to wit, on the 17th day of June, 1919, petitioners' motion for rehearing was in all things by respondent overruled and denied.

Petitioners further state that in assuming jurisdiction in the premises and in the proceedings held in connection therewith, respondent has been and is acting unlawfully, unjustly, unreasonably and in excess of its powers, and in violation of the provisions of the Constitution and laws of the United States aforesaid, and in excess of the authority in it vested by said Public Service Commission Act.
8 Petitioners further state that this application for a writ of review herein is made within thirty (30) days after petitioners' application for rehearing was overruled and denied by respondent.

Wherefore, petitioners pray that a writ of review, as provided for in Section 111 of the Public Service Commission Act, be granted petitioners herein, directed against respondent, and returnable not later than thirty (30) days after the date of the issuance thereof, and that this Court, by said writ, direct respondent to certify to this Court its record in this cause, and that upon the return date thereof this cause be heard by this Court and a judgment entered therein setting aside and reversing the aforesaid order made and entered by respondent, and that petitioners be granted such other and further relief as to the Court may seem meet and proper.

Upon the filing of said petition and on said 8th day of July, 1919, a writ of review was issued by the Clerk of said Circuit Court, directing respondent to file in said Circuit Court on July 17, 1919, the petition and record in said cause, with all the proceedings pertaining thereto, on file with respondent.

In obedience to said writ of review, respondent duly certified to said Circuit Court of Cole County and on or before the return date of said writ, the complete record of respondent in said cause, and the same was thereupon filed in said Circuit Court and became a part of the records thereof.

9 *Trial.*

Thereafter, on August 8, 1919, during the June Term, 1919, of said Circuit Court of Cole County, Missouri, said cause came on regularly for trial in said Circuit Court before the Honorable John G. Slate, Judge thereof, without a jury, appellants and respondent duly appearing by their respective counsel, and said cause was on said date and at said term duly submitted upon the pleadings and the original transcript of the record, testimony and exhibits of respondent, as aforesaid, and said cause was on the day and at the term last aforesaid taken under advisement by the Court. All of said matters and things are shown by orders of record of said Court.

Judgment.

Thereafter, on September 16, 1919, and during said June Term, 1919, of said Circuit Court, said Court entered judgment affirming the order of respondent, to wit, the order of the Public Service Commission of the State of Missouri, entered in said case of Commercial Club of Mountain Grove, Missouri, against these appellants, the judgment being duly entered of record on the date and at the term last aforesaid. The order of respondent as affirmed by said Circuit Court is hereinafter set forth.

Motions for New Trial and in Arrest of Judgment Filed.

Thereafter, on to wit, September 16, 1919, and during said June Term, 1919, of said Circuit Court, and within four days after the rendition of said judgment, appellants filed their motion for new trial and their motion in arrest of judgment in said cause, as
10 shown by entries of record made at the time.

Motions for New Trial and in Arrest of Judgment Overruled.

Thereafter, on said September 16, 1919, and during said June Term, 1919, of said court, said motions for new trial and in arrest of judgment were, by consent of the parties, taken up, considered and heard, and the Court on the same day and during the term last aforesaid, overruled said motion for new trial and said motion in arrest of judgment, as shown by entries of record made at the time.

Bill of Exceptions Filed.

Thereafter, on said September 16, 1919, and during said June Term, 1919, of said Circuit Court, appellants duly presented to said Court their bill of exceptions in said cause, and the same was on the day and at the term last aforesaid duly approved, signed, sealed, and ordered filed and made a part of the record in said cause, and the same was thereupon and on the same day and at the term last aforesaid filed in said Court and made a part of the record therein, all as shown by entries of record made at the time, as well as by the file mark of the Clerk endorsed on said bill of exceptions.

Appeal Granted.

Thereafter, on said September 16, 1919, and during the same term, appellants filed their application and affidavit for an appeal in said cause to the Supreme Court of Missouri, and the Court
11 thereupon on the same day and at the same term duly granted appellants an appeal to the Supreme Court of Missouri, all as shown by entries of record made at the time; and thereafter, during the same term and on, to wit, September 20, 1919, appellants duly filed their cost bond of appeal in the sum of $500; and all things necessary and proper to take said appeal have been done by appellants and said appeal has been duly taken.

Transcript Filed.

Thereafter, on October 13, 1919, and more than fifteen days before the regular April Term, 1920, of the Supreme Court of Missouri, appellants caused to be filed in the office of the Clerk of the Supreme Court of Missouri, a duly certified copy of the record entry of the judgment appealed from in this cause, showing the date, term, and day of the term upon which the same was rendered, together with a certified copy of the order granting an appeal, and on said date also caused to be filed in the office of the Clerk of said Supreme Court of Missouri the original transcript of the record, testimony and exhibits, certified to by respondent, and filed in said Circuit Court of Cole County, Missouri.

The complaint in the case of Commercial Club of Mountain Grove, Missouri, v. appellants, filed with respondent, is as follows (caption and signatures omitted):

Complaint.

"1. Now comes the Commercial Club of Mountain Grove, Missouri, and respectfully shows to the Commission that this Club is a voluntary organization of the business men and citizens of the City of Mountain Grove, organized for the development of said
12 City. Your petitioner further states that a regular meeting of said Commercial Club, the undersigned, A. F. Collier, was appointed chairman of a committee for the purpose of instituting the necessary proceedings to cause the St. Louis-San Francisco Railroad to regularly stop trains Nos. 105 and 106 at Mountain Grove, Missouri.

"2. Your petitioner further states that the St. Louis-San Francisco Railroad is a corporation organized under the laws of the State of Missouri and is engaged in the operation of a line of railroad between points in Missouri and points in the State of Arkansas, Kansas, Oklahoma, etc., and specifically that it operates a line of railroad from Kansas City, Missouri, through Springfield, Missouri; thence through Webster, Wright, Texas, Howell and Oregon Counties to points in Arkansas and other States, and that said line of railroad passes through the City of Mountain Grove, Missouri. That in the operation of such line of railroad said Company is a common carrier engaged in the transportation of freight and passengers for hire, as defined by the laws of the State of Missouri. That at the present time the properties of said St. Louis-San Francisco Railroad are under the control of and being operated by Walker D. Hines as Director-General of Railroads, United States Railroad Administration, under and by virtue of an appointment by the President of the United States and as such Director-General, he is responsible for the operation of the trains of said co-defendant at the present time.

"3. For cause of action, your petitioner respectfully shows that Mountain Grove, Missouri, is an important and growing city
13 in the southern part of the State of Missouri, and that the passenger traffic in and out of said point is extremely heavy, and that the proper growth and development of Mountain Grove, Missouri, is dependent upon better passenger service being furnished than is now operated by the defendants herein.

"Your petitioner further alleges that for a long time past the defendant company did stop trains Nos. 105 and 106 at Mountain Grove, Missouri, on flag for passengers to or from Springfield on the west and for passengers to or from certain points south, but that about sixty days ago a change in train schedules was made by said St. Louis-San Francisco Railroad and as a result thereof, trains Nos. 105 and 106 do not now stop at Mountain Grove, to the detriment of your petitioner and to the detriment of the City of Mountain Grove.

"Wherefore, your petitioner prays that a copy of this petition be served upon the defendants, and that after due notice a hearing be

set down by your Commission in order that your petitioner may be able to show the necessity for the regular stopping of trains Nos. 105 and 106 at Mountain Grove, Missouri, by the defendants, and that after such hearing and other investigation, your honorable Commission issue such order or orders as to them may seem meet."

The separate answer of defendant, St. Louis-San Francisco Railway Company, to said complaint, omitting caption and signatures, is as follows:

14 *Separate Answer of St. Louis-San Francisco Railway Company.*

"Comes now St. Louis-San Francisco Railway Company and, for its separate answer to the complaint filed herein, denies that it is now, or has been since January 1, 1918, in possession of or operating a line of railroad through the City of Mountain Grove, Missouri, but on the contrary this defendant avers that its line of railroad through said City of Mountain Grove is now, and has been continuously since January 1, 1918, in the possession of and being operated solely by the Director General of Railroads, appointed as such by the President of the United States.

"Wherefore, having fully answered, said defendant prays that the complain herein be dismissed as to said defendant, and that said defendant be discharged with its costs."

The separate answer of defendant, Walker D. Hines, Director General of Raidroads, to said complaint (omitting caption and signatures) is as follows:

Separate Answer of Walker D. Hines, Director General of Railroads.

"Comes now Walker D. Hines, Director General of Railroads, and for his separate answer to the complaint filed herein, states:

"1. That said defendant admits that the Commercial Club of Mountain Grove, Missouri, is a voluntary organization of the business men and citizens of the City of Mountain Grove. Said defendant states that he has no information or belief sufficient to enable him to answer the allegations of the complaint that at a regular meeting of said Commercial Club A. F. Collier was appointed
15 chairman of a committee for the purpose of instituting necessary proceedings to cause St. Louis-San Francisco Railroad to stop trains Nos. 105 and 106 regularly at Mountain Grove, Missouri, and defendant therefore denies each and every of said allegations in said complaint.

"2. Said defendant admits that he is at present Director General of Railroads under the United States Railroad Administration, appointed as such by the President of the United States, and that as such Director General he is now in possession of and operating, among others, the line of railroad of St. Louis-San Francisco Rail-

way Company, extending from Kansas City, Missouri, via Fort Scott, Kansas, Springfield, Missouri, to Memphis, Tennessee, thence to Birmingham, Alabama, and admits that said line of railroad passes through the City of Mountain Grove, Missouri. Said defendant further admits that said line of railroad of St. Louis-San Francisco Railway Company has been continuously since January 1, 1918, in possession of and being operated solely by the Director General of Railroads, United States Railroad Administration, under proclamation of the President of the United States dated December 26, 1917, and the orders and directions of the President of the United States, he being thereunto duly authorized by law.

"3. Said defendant states that he has no information or belief sufficient to enable him to answer the allegations of the complaint that the passenger traffic in and out of the City of Mountain Grove, Missouri, is extremely heavy or that the proper growth and development of said City of Mountain Grove, Missouri, are dependent upon better passenger service being furnished than is now fur-
16 nished by this defendant, and defendant therefore denies each and every said allegations in said complaint.

"Defendant admits that prior to the 17th day of November, 1918, train No. 105 on said St. Louis-San Francisco Railroad was stopped at Mountain Grove, Missouri, on flag, for passengers destined to Memphis, Tennessee, and points south and east of said latter point, and that train No. 106 on said St. Louis-San Francisco Railroad was stopped at Mountain Grove, Missouri, on flag, for passengers destined to points north and west of Springfield, Missouri, and admits that on or about said date a change in train schedules was made, as a result whereof said trains Nos. 105 and 106 do not now stop at Mountain Grove, Missouri, on flag, but denies that said change in schedules, or the failure to stop said trains Nos. 105 and 106 at Mountain Grove is to the detriment of complainant or to the detriment of said City of Mountain Grove.

"4. Further answering, defendant states that this defendant now operates, in addition to said trains Nos. 105 and 106, four passenger trains daily on said St. Louis-San Francisco Railroad, through said City of Mountain Grove, all of which trains, except trains Nos. 105 and 106, are scheduled to and do stop at Mountain Grove. That the schedule of said trains at Mountain Grove is as follows:

Southbound, No. 101	11:05 p. m.
Southbound, No. 103	10:30 a. m.
Northbound, No. 102	4:45 a. m.
Northbound, No. 104	5:45 p. m.

17 "Defendant avers that the service provided by said passenger trains which now stop at Mountain Grove, Missouri, as aforesaid, is reasonably adequate to afford all necessary accommodations for the traveling public into and out of said City of Mountain Grove.

"5. Further answering, defendant states that said trains Nos. 105 and 106 are interstate trains operating between Kansas City, Missouri, and Memphis, Tennessee, via Fort Scott, Kansas, and Springfield, Missouri; that said trains are now operated upon a very fast schedule controlled by the necessity of making connections at Kansas City, Missouri, and Memphis, Tennessee, as well as Birmingham, Alabama, with connecting lines for the interchange of interstate passenger and express traffic, and the handling of United States mails; that the elimination of the stops of said trains on flag at Mountain Grove, Missouri, was to enable said trains to maintain said schedule and to make necessary connections at the points aforesaid with trains on other lines of railroad; and that for this Commission to grant the relief prayed for in the complaint would directly burden and interfere with interstate commerce, and would be in conflict with Section 8 of Article I of the Constitution of the United States.

"6. Further answering, defendant avers that for this Commission to grant the relief prayed for in the complaint would be in contravention of Section 21 of Article II of the Constitution of Missouri, in that private property would thereby be taken or damaged for public use without just compensation.

"7. Further answering, defendant states that for this Com-
18 mission to grant the relief prayed for in the complaint would be in contravention of the provisions of Section 30 of Article II of the Constitution of Missouri, in that defendant would thereby be deprived of property without due process of law.

"8. Further answering, defendant states that for this Commission to grant the relief prayed for in the complaint would be in contravention of Section 1 of Article XIV of the amendments to the Constitution of the United States, in that defendant would thereby be deprived of property without due process of law, and would be denied the equal protection of the law.

"Wherefore, having fully answered, defendant prays that said complaint be dismissed, and said defendant discharged with his costs."

The bill of exceptions filed in said cause is as follows (caption omitted):

Plaintiffs' Bill of Exceptions.

Be It Remembered, That heretofore, to wit, on the 8th day of August, 1919, this cause came on for hearing in the Circuit Court of Cole County, Missouri, during the June Term, 1919, of said Court, before the Honorable John G. Slate, Judge thereof, and thereupon the following proceedings were had:

Appearances:

E. T. Miller and A. P. Stewart, for plaintiffs.
R. Perry Spencer and James D. Lindsay, for defendant.

The cause was duly submitted on the day and at the term last aforesaid upon the pleadings and the original transcript of
19 the record, testimony and exhibits in the case of Commercial Club of Mountain Grove, Missouri, Etc., v. St. Louis-San Francisco Railroad et al., duly certified to this Court by the Public Service Commission of the State of Missouri, and filed and made a part of the record herein, the same being filed in this Court pursuant to and in compliance with the writ of review heretofore issued herein directed to said Public Service Commission of the State of Missouri, said pleadings and original transcript of the record, testimony and exhibits, and said certificate thereto, being as follows:

(The complaint filed before the respondent and separate answers of St. Louis-San Francisco Railway Company and Walker D. Hines, Director General of Railroads, here called for in the bill of exceptions, are hereinbefore set out in this abstract.)

Proceedings and Evidence Before the Respondent.

(Caption Omitted.)

Present: A. Z. Patterson, Special Examiner.

Appearances:

C. B. Bee, for the Commission.
S. B. Warren, F. E. Schooley and E. H. Farnsworth, for complainants.
A. P. Stewart, for defendants.

Proceedings.

Mr. Stewart: In order to preserve the point we have raised in this case, I desire to object to the hearing before Mr. Patterson as Special Examiner for the reason that under the Public Service Com-
20 mission law a hearing must be had before either the Commission or a Commissioner, and the appointment of a Special Examiner is without authority under the Public Service Commission act, and on the further ground that in the event the Commission should make an order granting the relief prayed for in the complaint and further proceedings should be necessary to test the validity of that order, Mr. Patterson, as general counsel for the Commission, would be the officer charged with the enforcement of the order of the Commission.

Examiner Patterson: Well, that objection is overruled. Just add to my ruling on that objection the following: Such ruling to be subject to the approval and confirmation of the Public Service Commission, upon presentation to such Commission of this record in accordance with the provisions of the Public Service Commission law.

Examiner Patterson: As I understand it, all you ask for is a flag stop?

Mr. Warren: No, sir; a general permanent stop for these two trains—we don't want a flag stop any further.

Examiner Patterson: Which is the southbound train?

Mr. Warren: No. 105, and the northbound is 106; and we ask that an order be made that both of these trains shall stop, and that it shall be placed upon the railroad folder and charts as such.

A. F. COLLIER testified for complainants:

Am chairman of the Transportation Committee of the Mountain Grove Commercial Club and am the complainant. Have re-
21 sided at Mountain Grove since 1888, except about three years.

Am familiar with the train service in Mountain Grove. We have two trains each way a day that make regular stops here, and we have two trains, on each way, that don't stop here, and they did stop here up until the 17th of last November. We have two State institutions here, the Poultry Station, supported by the State, and they spend around $100,000 out there every two years, and we have the Fruit Experiment Station, that spends about the same; both State institutions, and both of those institutions are educational and put here by the State to foster the poultry industry and the fruit industry, and with the present arrangement of train service here it is mighty hard for people to take advantage of those institutions to get in and get out, killing too much time; and we have a town of 2,500 people which draws trade about thirty-five miles north and northeast and about thirty-five miles south and southwest. That territory comes to Mountain Grove for their freight; they haul stuff in to ship out and ship stuff in to haul out. They come here to take the trains and they get off of the trains, and it is very inconvenient for a man coming that distance to get in here at different times. Now train No. 4, for instance, into Mountain Grove at 5.55; and they get in here, starting thirty-five miles south, means an hour or two after the trains have come, but can't get out until the next morning about 5 o'clock. The same is true going in the other direction, and the same is true coming into town either from Memphis or from Springfield. I feel like our town is entitled to the support that the Frisco Railroad gets out of the town, and has got out of it; that we are entitled to the best service they can give us, which I don't think
22 they are doing. I travel to and from Springfield probably once a month. I have occasion about once a month to come through Springfield for here, and up until these trains were taken away I always—well, the first train comes out about 8 o'clock; believe it is No. 101 or 103—and I always wait for the next train because my experience has been, you go down to that first train and very invariably if you don't happen to get there mighty early and rustle pretty hard, the chances are that you don't have a good chance to get a seat before you get down to Seymour or in there; in fact the train is nearly always crowded. That is the train that leaves Springfield at night. It is nearly always crowded, and I have been on there and seen women with babies stand up, not able to get a seat, down as far as Seymour. Of course I was standing up myself

and dozens of other men; but I have seen that on more occasions than one; and when this train stopped here, that lessened that heavy carriage out of there coming this way, and while the train coming this way stopped only on flag or ticket from Springfield to Mountain Grove or from beyond, I don't remember of ever being on that train but very few times, if any, that there wasn't two or three or four that got off here. Don't think I ever got on the train going up, the first train, but what there were others going up. We always used that train when we had the opportunity. I used the first train coming down, but in going from here to Springfield I usually went up on No. 4, but in coming down, unless I stayed over night in Springfield, of course I come down on the train in the morning, but if I was coming out of there intending to come home that night I usually used the fast train in preference to the first one
23 because I didn't like to stand so much. Am engaged in business here and it is necessary in the transaction of my business to ship express matter to and from this point. These two trains, Nos. 105 and 106, didn't affect my express matter any. If train 105, southbound, stopped here regularly, and train 106, northbound, stopped at Mountain Grove for passengers originating south of Thayer and for passengers destined beyond Springfield, but not for Springfield passengers, it would not satisfy me personally. Train 106 would be an advantage to the people of Mountain Grove for Springfield business in regard to making connections from points out of Springfield to the southwest and getting into St. Louis, in fact, getting out of Springfield to anywhere. A great many going from Mountain Grove to Springfield to transact business take train 106. Believe you will find that No. 106 has always carried more or less passengers from here to Springfield. Train 106 arrives at Springfield about 3 or 4 o'clock in the morning and train 102 arrives at Springfield about 8 o'clock in the morning; don't think it is late very often. Don't think that passengers going to Springfield to attend to business would want to take a train getting them in there at 3 or 4 o'clock in the morning, but some do take it. There are probably not many that would take train 106 just to go to Springfield, not intending to go anywhere else; but am not sure about that. If you want to go to Bolivar or Lamar, the most convenient train to take is this fast train. Train 106 does not stop at Mountain Grove on flag now and if you want to go to Lamar, you are just hung up in Springfield. A man makes connection to Lamar going out on No. 4. Don't know the connections to go to Nevada. Our insane patients are taken from this county to Nevada, but don't
24 know just the number we have there. Leaving here with them on train 102, don't know what their connection would be to reach Lamar. When I go to St. Louis, try to leave Springfield about 11 o'clock; only go to St. Louis two or three times a year. Don't know what are the through trains from St. Louis to Springfield; I generally try to leave St. Louis about 8 o'clock at night and get into Springfield in the morning before daylight and then come down on this early train.

Cross-examination:

Am in the produce business at Mountain Grove. Mountain Grove draws trade for a distance of about twenty-five or thirty miles north and northeast and about the same distance south and southwest. Some little towns that are post offices or towns where there are one or two or three country stores; they use this town for their railroad point; they ship freight in and come here to the wholesale house to buy their groceries and things. They use this as a distributing point for groceries and goods of all sorts for these surrounding towns, but they don't buy all of their goods here. A great many people from the territory south and southwest of Mountain Grove come in to take train 106. You take it in the winter time when the roads are bad and sometimes a man south of here coming twenty-five or thirty miles, if he didn't get an early start he wouldn't get here in time to catch No. 4. Don't think I could give you a single instance where a man drove in to take No. 106 when it did stop on flag, but we naturally know that a person coming that far gets in town
25 late, and we know when they do do it they have missed that fast train. Train No. 106 goes through Mountain Grove about 2:45 in the morning. Couldn't say how many of these men coming from the territory south and southwest would take that train. In the summer and fall there are a good many boys in the country south of here and northeast of here, after they get their work done up they go west to help in the harvest fields, and I have seen dozens of them in and out of town going to the harvest fields in the west during wheat harvest and threshing time. Train 106 runs through Springfield and Lamar, Fort Scott, Kansas, and on to Kansas City. Some of these men I spoke of as going west to the harvest fields would go southwest from Springfield and at other times they would go to Kansas City and west into Kansas. Train No. 102, northbound, passes through Mountain Grove at present at 4:45 a. m.; it also runs through Springfield and goes to Kansas City over the same line as No. 106; it passes through Mountain Grove about two hours after train 106, and those same men could take train 102, but not get to Kansas City so quick. All of the men going to the harvest fields wouldn't go to Kansas City. I have taken train No. 106 at Mountain Grove at different times during the time it stopped here on flag and don't think I ever went over there that there wasn't three or four or five probably getting on. Don't know where those passengers were destined to. At different times I knew they were going to Springfield. At present we have two passenger trains each way daily through Mountain Grove besides trains 105 and 106, and these other four passenger trains make regular stops at Mountain Grove. Train 101, southbound, passes here at 11:05 p. m.;
26 train 103, southbound, passes here at 10:30 a. m.; train 102, northbound, passes here at 4:45 a. m., and train 104, northbound, passes here at 5:55 p. m. A man wanting to go from Mountain Grove to Springfield and spend the day could leave here on No. 102 at 4:45 a. m., spend the day and get out of Springfield at 8 p. m., and arrive at Mountain Grove at 11:05 p. m. I think for the con-

venience of the people of Mountain Grove we ought to have these fast trains and for the convenience of people coming here we ought to have them. Of course we can get to Springfield and back, but my complaint is the Frisco is not giving this town the service it is entitled to and the service it can afford to give it. One reason the stoppage of trains 105 and 106 would benefit the inhabitants of Mountain Grove, so far as train service is concerned, to a greater extent than they are now served by these other four trains, is that these trains are crowded. The standing up business on train 101 coming out of Springfield has been so common that I don't remember much about that, but I doubt very much if any of those people had to stand clear to Mountain Grove. Think I last noticed that condition of the train being crowded coming out of Springfield some time along in November, or after this thing was taken away from us. Putting another passenger coach on train 101 would relieve that condition. People coming to visit the Poultry Station and the Fruit Experiment Station, if they get into Springfield on any train that comes in at night after 8 o'clock, they have to stay in Springfield until the next morning, and leave there about 8 o'clock and get here about 11 o'clock, and the day is half gone, and they leave here at 5:55 in the afternoon, and instead of spending a day over at the Poultry
27 Station he spends about half a day; instead of putting in half a day there and half a day at the Fruit Station, he has only half a day that he gets here, when if he comes down on the fast train the night before, he could stay all night and put in the day at those stations. The people that come here are men interested in poultry all over the State of Missouri and surrounding States. In going from Mountain Grove to St. Louis, you could leave here on No. 104 at 5:55 p. m., get to Springfield at 8:30 p. m., and then you have the choice of three trains going from Springfield to St. Louis, which will put you into St. Louis the next morning. In returning from St. Louis you could leave there about 8 p. m., arrive in Springfield the next morning, leave Springfield at 7:55 a. m., and arrive at Mountain Grove at 10:30 a. m. I have ridden train 105 probably twelve or fifteen times a year when it was stopping here. Think all of the cars in that train are steel cars, but cannot say whether it is a heavy train; don't know how many cars there are in the train.

FRED ELLIS testified for complainants:

Reside in Mountain Grove and am general agent for the Franklin Life Insurance Company. Do a good deal of traveling in and out and cover twenty-five counties. Have a good many men here on business with me. My work is all over this and other States and I sell personal business at the Stock Yards at Kansas City and St. Louis. I used to come home from Kansas City, leave there early in the afternoon or evening and get home to bed that night
28 at one something. I could leave St. Louis in the afternoon, get to Springfield in the evening and home on No. 105. Now, when I get there on that train have to stay there all night and lose half of the next day. Coming from Kansas City have to ride 105 down there and stay all night until the next morning and lost half

of the next day, and as I see it it affects the town in my opinion. There are traveling men that would make this their home, that would like to live here, if they had train service they should have, whereas they have to cover their territory and it is a business proposition for them like it is for me. As soon as I can sell what I have got here, to move away from here, where I've got the train service. Nobody uses 106 between here and Springfield now, and I wouldn't use it very much unless I was going to Kansas City; I usually rode train 102 to Springfield. Wouldn't want to say that train 102 is a better train for Springfield than 106; there is not much difference in the time they leave here; train 106 is a much better train to ride. I had a necessity for train 106 last night; I was in Oregon County and got in here on 102 this morning; if I could have got in on No. 106 I would have been home in bed two hours sooner. Train 105 can be used by people having business in Springfield after 8 o'clock in the evening. I go up on train 104 and see someone and fill an appointment and get back that night on train 105. Don't think that applies to train 106.

Cross-examination:

Am speaking of my own experience with train 105. Have lived in Mountain Grove thirty-six years. Didn't keep any books on how many passengers on an average got off train 105 during the
29 time it stopped here on flag; I never noticed who got off, but think four or five, and a lot of times a good many more. I would come from Springfield to Mountain Grove on train 105 on an average of two or three times a month.

JESS WHEELER testified for complainants:

Have resided at Mountain Grove seventeen years and am in the real estate business. Am familiar with the train service here. It is a great drawback in my line of business, especially with train 105, because my people coming from the north and west don't find the station on that fast train, and lots go to Willow Springs, where they can stop there, and I know of a number of instances where they told me when they stopped to see me on the return trip and figured that we didn't have any town here. I refer to people I was corresponding with. That occurs every week; there is hardly a day that they don't come up. We have no stop, and that is the only good train out of Kansas City. I do a great deal of advertising in the north and western States. Have been in the real estate business twelve or thirteen years. It is a frequent occurence that these people go through when they would have stopped off if we had a station stop at this place. Our town is as good again a town as Willow Springs, twice as many in population. From west of Springfield a great many come through—when a man starts the quicker he can get here, that much the better. Take a man leaving here, a customer from Colorado, Nebraska, or some other State, he wants to know how he can make the best connection, and a man going to

Kansas City, he leaves on the evening train and rides all
30 night long to get to Kansas City, and if we had the other
train he can get a night's rest and get to Kansas City a little later, or he can wait and take the morning train and ride it all day long. No. 106 goes right on through Springfield. No. 104 lays over in Springfield about two hours; it is the evening train, either No. 4 or No. 2.

Cross-examination:

I deal mostly in farm lands and some city stuff. Mountain Grove does not appear as a stop on the time card. If you go to the agent at Kansas City and ask to buy a ticket on train 105, they tell you you can't do it, because that train doesn't stop here. A man could buy a ticket for train 103, leaving Kansas City at 11.40, for Mountain Grove, and arrive here at 10.30 the next morning. Train 103 also comes from Kansas City. In going from here to Kansas City a passenger could leave here on train 104 at 5.55 p. m., go to Springfield, then get a sleeper from Springfield to Kansas City on the same train and arrive at Kansas City at 7.10 the next morning.

W. S. CANDLER testified for complainants:

Am president of the Commercial Club and Mayor of the City of Mountain Grove. Am familiar with the train service here, and do a good deal of traveling. The train service here is all right except 105 and 106, and previous to this order, issued along in October, which took effect November 17th, it was fairly good from the fact that we could get out and other people could get in, but since the
stoppage of trains 105 and 106 it works a hardship on us in
31 many ways. Now, if you leave St. Louis on No. 9, about 2.20 p. m., you get to Springfield about 9.15 in the evening, and No. 101 is gone, leaving there about 8 o'clock, and, of course you want to come home, and you can't come home until morning; you have to wait for 103, which leaves there about 8 o'clock in the morning. We have here a wholesale grocery house which does a large volume of business. A traveling man who sells groceries leaves St. Louis on No. 9, lays over in Springfield for 103, gets in here at 10.30, stays over all day before he can go to West Plains that night, which is the next jobbing center. Now, so far as No. 106 is concerned, it is not used so much out of here as No. 105, but in here people from Memphis, Tennessee, Washington and other eastern points, have to come on No. 106 to Willow Springs and lay over there for 102, the slow train. That happens very often. Now, from the west, train 105, if we had this for passengers, homeseekers and for various interests, the stop from Kansas City and other places—it works a hardship on us. We have two State institutions here and visitors from all over the State and other States, and they come in here to visit the place and would like to stay here all day. We have a creamery at Mountain Grove, and the value of its products, butter, ice cream and soda water, amounts to $900,000 a year. We have

a wholesale grocery house which does a business of $300,000. Eggs, chickens and produce of that kind will amount to $300,000. Estimate on flour and feed is $200,000. Lumber from the tree, sawed and planed, about $100,000. Cattle, hogs and mules, $100,000. We have three banks here and the volume of business, according to the last statement, was about $800,000. There is a good
32 deal of grain and hay, value about $100,000. State Fruit Station has about 190 acres and about fifteen employes, and the Poultry Station about thirty-five or forty acres and about fifteen employes. We have a large territory to draw trade from; we draw trade about as far as Rock Bridge, about thirty-six miles north, and our trade is unlimited as far as the southern part is concerned. We have a chautauqua here during the summer and the performers have to leave here to make other points, and it is essential that 106 stop to take that talent; we have been trying to get them out on train 102 and they have nearly always missed their connection. We have an overall factory here employing about fifty girls. Mountain Grove is the largest city in the county and has a population of about 2,200. Mansfield is the next largest place, twenty-two miles west. Mountain Grove has been considered a good school town; we have good grade schools and a high school, and sixteen teachers altogether are employed.

Cross-examination:

Have not observed many passengers getting off train 106. Prior to November, 1918, No. 106 stopped at Mountain Grove on flag for several years. Would say that 150 passengers a month to and from Mountain Grove would be served by the stopping of trains 105 and 106 here on flag, which are not now served by the other trains. Those passengers would come from points beyond Springfield during all the year except in the dead of winter. Immigration is large and would be larger if we were on the map. We would rather have a full schedule stop for these trains than to have them stop
33 here on flag as they did prior to November 17th last. The figures I have given as to the volume of business was for the year 1918; it is an estimate.

J. H. LIVINGSTON testified for complainants:

Am local freight agent for the Frisco at Mountain Grove and have been agent at this place a little over twenty-six years. Couldn't say how many people come in here per month on train 105; have no way of knowing, as I am not at the station when that train arrives and departs. We couldn't tell from our records how many tickets we have been selling for train 106; we don't keep a record by trains. I never sold any tickets for 106 myself. The night man who sold tickets for 102 also sold them for 106 when 106 stopped here. When trains 105 and 106 stopped here on flag it was a flag stop for 106 for passengers for Springfield or beyond and for 105 for passengers for Memphis or beyond. We didn't flag train 105 except for Mem

phis or beyond and 106 for Springfield or beyond. The stop for 105 coming this way was for passengers from Springfield or beyond; of course we didn't know when that train was going to stop unless we had a passenger for Memphis or beyond. Think the percentage of the time that 105 stopped was almost 100 per cent. Train 106 wouldn't stop that often; probably averaged three times a week for Springfield and beyond. Couldn't say how many people came in on train 105. Do know that frequently a great many people from Mountain Grove would go to Springfield on train 104 and return on train 105, but wouldn't want to say how many.

34 Cross-examination:

When train 105 stopped at Mountain Grove on flag we were unable to tell whether it would stop unless we had sold a ticket from Mountain Grove to Memphis or beyond. It wouldn't stop under those circumstances unless there were passengers from Springfield or west of there, and then the train would stop at Mountain Grove. Mountain Grove hadn't been a flag stop for train 106 for passengers coming in. This was a flag stop for Springfield and beyond, and whenever 106 stopped here it was on our flag, otherwise it didn't stop. Our records would only show the total number of tickets sold from Mountain Grove to other points; there would be no way to separate them to ascertain what was sold for 106 and what for 102.

L. W. ELLINGTON testified for complainants:

Am night watchman here and have been two years and a half. It is part of my business to be at the depot on the arrival of the night trains. Prior to November 17, 1918, when I met the local passenger trains about as many got off No. 105 as the local; I couldn't see much difference. Sometimes twelve or fifteen or maybe twenty got off 105; not that many very often; most always from five to ten, or something like that. There wasn't so many that got off of train 106; but pretty nearly always someone; they always flagged it. Except it went through without stopping when there wasn't anyone to get off. Don't remember that 105 missed stopping here but once in two years and a half while I was night man.

35 Cross-examination:

Did not see twenty passengers get off train 105 very often, but have seen that once in a while; didn't count them, but fifteen or twenty; generally from five to ten. These pasengers would come from different places, from beyond Springfield. Couldn't say where they came from. Saw 105 go through without stopping once in two years and a half; that was while it had the flag stop order to stop here on flag.

FRED CROSBY testified for complainants:

Am assistant secretary of the State Poultry Experiment Station. From January 1, 1918, to January 1, 1919, we had approximately

700 visitors at the station. The majority of those visitors were people that came in here from Springfield and beyond and took that occasion to look over the Poultry Station. When train 105 stopped at Mountain Grove people from Kansas City or beyond could get here at 1:55 at night and have a full day the next day for the Poultry Station and the Fruit Station, but as it is now, they leave Kansas City at 11:40 p. m. and get to Mountain Grove at 10:25 the next day, and they have to make a sort of hurry trip. We have people who come and stay two or three days, but that is exceptional and I find since these trains have discontinued stopping here people all over the State have asked me how they can get here, and I tell them conditions are such now that they can't. Most of the people that come to visit the Poultry Station come from the west, from points beyond Springfield. We have some people, have had
36 some from Florida. It is very inconvenient for myself and my men. It used to be I could leave Kansas City at 5:30; now have to stay until 11:30, put up two dollars for a berth and lose half a day besides. That is true of all of us who travel. At this time of the year I don't travel very much, but during the fall I am in and out practically three-fourths of the time, and it is very inconvenient for me to have these trains off, especially train 105.

Cross-examination:

The State Poultry Farm is located practically in the town of Mountain Grove. Cannot say how many of the 700 visitors that were here in 1918 came down on train 105. The number of visitors I mentioned are those who registered at the station. We have lots that don't register and they would increase the number that we used to have before this stop was discontinued; lots of people would be there early in the morning, who would come in on train 105 during the night. Don't know what effect it would have on the Poultry Farm if trains 105 and 106 would not handle passengers between Mountain Grove and Springfield proper. We have a great many visitors from Springfield, but they use the other trains. I think it is essential for train 105 to stop here. Have a selfish motive of my own because I hate to lose half a day every once in a while. Considering the transient visitors to the Poultry Farm, I say it is an advantage to have train 105 stopped regularly. The more people we get to visit the station the better it is for the poultry industry of the State and for the railroad. Cannot state how many of the visitors to the farm arrived at Mountain Grove on train 105.

37 J. A. LEWIS testified for complainants:

Have resided at Mountain Grove for eleven years and am a traveling salesman for the Springfield Grocer Company, and travel in and out of Mountain Grove. I find it very inconvenient on trains 105 and 106, especially 105. There are lots of times I go down to Springfield on train 104 and come back on train 105, otherwise I have to come back on train 103 and lose a day. I am speaking from my point of view; couldn't say about the general traveling public.

I know it is inconvenient unless we have 105. Not long ago I was in Kansas City and couldn't get out on train 105 because it didn't stop here, and by that I lost the day. Train 105 leaves Kansas City around 5 o'clock in the evening. Train 103 leaves Kansas City about 10 o'clock and gets here at ten something the next day.

Cross-examination:

I am speaking from my own experience and that of other traveling men. Judge about ten traveling men live in Mountain Grove and travel out of here. Couldn't say whether the number who live here and make this their headquarters has decreased any since November 17, 1918, with the exception of one. With that one exception there are as many living here now as when train 105 stopped here on flag; but it is very inconvenient.

RAY TREVON testified for complainants:

38 Am secretary of the Mountain Grove Ice and Creamery Company. We have a good-sized plant here and have an investment of something in excess of $100,000; have a public utility plant furnishing the City of Mountain Grove with electric light and power; operate a creamery making in excess of one and a half million pounds per year. Have an ice cream department making about 25,000 gallons a year, and a bottling works that bottles twelve or fifteen thousand cases of soda water, and we expect to get more under the same roof. We make large shipments of stuff by express. We ship butter by express to all points in Arkansas, but that is not affected by the fast trains. We ship to Memphis, Birmingham, Atlanta and sometimes to New Orleans and Charleston, South Carolina. We ship very little west; receive goods from the west, but don't ship much to the west. We would get considerably more business to points in Birmingham and beyond if we had a better schedule; would get better results if we could use the faster trains; one of our sales managers is here and a traveling salesman is here, and he is up against the proposition of getting in and out of here.

Cross-examination:

Have been connected with the creamery industry here four years. During the time that train 105 stopped here on flag prior to November 17, 1918, we did not make any shipments of butter by express on that train to Memphis or points beyond; that train never did stop for express.

JAMES DOUGLAS testified for complainants:

39 Reside at Mountain Grove and am a hardware salesman and travel in and out of here. The taking off of trains 105 and 106 has just delayed my trips a little bit getting in here from both ways. In coming from Springfield here have usually had to wait and come out the next morning instead of coming out that night; would lay over one whole night at Springfield and lose half the

next day coming here. Going in the other direction it is not so bad; I don't use it as often that way; most of my territory is west or north of here.

Cross-examination.

My territory is west of Springfield; I don't make local points between Springfield and Mountain Grove. Travel south of here as far as Hardy, Arkansas. Whether I could take train 101 out of Springfield at 8:30 in the evening would depend on where I was coming from; if I get into Springfield after train 101 has gone I stay over and come out the next morning on train 103. The flag stops as they were maintained before would give me very satisfactory service. I used to get on train 106 at Mountain Grove every week, usually going to Springfield. I would ride train 106 instead of 102 to be sure of getting to Springfield, and you don't have so much trouble in waiting and stopping at every little station; a fellow likes to be in a hurry and get there. Train 102 would serve me for all purposes in going to Springfield if I were going there. Train 106 would not be an advantage to me beyond Springfield unless I went a good way beyond, or unless I might catch some connection; but in going to Springfield locally to spend the day train 102 would be as advantageous as train 106 and would give me two more hours at home. If I were going to Lamar, which is my extreme western point, train 106 would be better. Train 102 also stops at Lamar about 1 or 2 o'clock in the afternoon.

ADOLPH MEYERS testified for complainants:

Have lived at Mountain Grove five years and am in the hotel business. Am familiar with the train service. When train 105 stopped here I often got more off that train than train 101. While trains 105 and 106 stopped here it was customary nearly every morning to get passengers off of those trains; very seldom failed; train 106 not very often, but train 105 always.

Cross-examination:

During the time that trains 105 and 106 stopped here on flag I met them every night. Couldn't say how many passengers got off of train 105; sometimes one or two and sometimes seven or eight; don't know whether they came from Springfield or points beyond. They could leave Springfield on train 101 at 8 o'clock and arrive here at 11:45 or stay in Springfield and come down on train 103 in the morning. Suppose that would depend on the time they arrived in Springfield.

C. T. MASON testified for complainants:

Am assistant superintendent of the Frisco Railroad in charge of this division. Train 101 leaves Springfield at 8 p. m., and passes through Mountain Grove at 11:05 p. m. Train 105 leaves Spring-

field at 11:36 p. m. and passes through Mountain Grove at
41 1:34 a. m. Train 103 leaves Springfield at 7:50 a. m. and passes through Mountain Grove at 10:30 a. m. Train 106 passes through Mountain Grove at 2:45 a. m. and arrives at Springfield at 4:35 a. m. Train 102 passes Mountain Grove at 4:45 a. m. and arrives at Springfield at 7:50 a. m. Train 104 passes through Mountain Grove at 5:55 p. m. and arrives at Springfield at 8:30 p. m. Train 103 leaves Willow Springs at 11:30 a. m. and arrives at Olden, a point eleven miles south, at 11:55 a. m. Train 105 leaves Willow Springs at 2:26 a. m. and arrives at Olden at 2:52 a. m. The time is one minute less on train 105 between Willow Springs and Olden. The time of train 103 in there is too fast and we hardly ever make it. Train 103 makes two stops between Willow Springs and Olden, at Burman and Pomona. The time required for a train to stop and let off four or five passengers and start again depends on the weight of the train and the grade conditions; a light train will start with less delay than a heavier train, and a train on level grade or a descending grade will get away easier. On this division between Springfield and Thayer the average stop on train 105 would be about five minutes; don't think we could stop that train and get it going again in less than five minutes, and if they stood at the station you would have to add whatever time they stood there. Under the present schedule trains 103 and 105 have the same schedule time between Willow Springs and Olden, but the time of train 103 isn't properly distributed. Train 103 cannot leave Willow Springs before the time shown on its card, and that train is generally a few minutes late at Olden. It gets out of Willow Springs late; it isn't enough time from Sterling; it will go in on time, but the
42 time is short after leaving Sterling, and that is due to the fact that the time isn't distributed to the best advantage. Four minutes' time taken off of a through train like 105 between Springfield and Thayer would affect the schedule of that train just that much. Train 105 each night may meet operating conditions that are not on the time card that delay it more than the required time to stop at a given station, but those conditions are taken into consideration when we string the card and a certain amount of time is lost in the card, so we provide for such emergencies as that. If Mountain Grove was made a flag or regular stop for train 105, if other conditions were favorable, the five minutes that would be required to stop at Mountain Grove might be regained, but there are times when the train was late and it would go into Memphis that much later. If everything was favorable and nothing unusual took place, I think the five minutes could be regained between Mountain Grove and Memphis. The time of train 106 between Thayer and Springfield is practically the same as that of train 105. Train 105 has an average speed between Springfield and Thayer of 32.6 miles an hour, which includes all stops for operating conditions; train 106 has an average speed between the same points of 32.4 miles an hour, including same operating conditions or stops. There is about seventy-one minutes' difference in the running time of train 103 and train 105 between Springfield and Thayer. Considering the flag stops,

train 103 makes eighteen more stops between Springfield and Thayer than train 105 does. The average time of 103's stops over the running time of train 105 is about four minutes per stop. Train
103 is a much lighter train than train 105; ordinarily train
43 105 has seven steel cars and frequently an extra sleeper, while train 103 has six cars and much lighter equipment; the cars are not all steel. The same class of motive power is run on trains 103 and 104 as on 105 and 106.

Cross-examination:

In figuring the average running time of trains 105 and 106 we include meeting points, taking coal and water and cleaning the ash pan, all of that is absorbed in the average speed. By average speed I do not mean that that is the actual running speed of the train. The maximum speed is fifty miles an hour and we have to make that wherever we can in order to make the schedule. By that I mean those trains are not permitted to run at a speed over fifty miles an hour. The speed of train 106 is practically the same as that of train 105. The average speed of train 103 from Springfield to Thayer is 25.4 miles an hour, and that of 104 24.4 miles an hour. Trains 103 and 104 have a slower average running speed than trains 105 and 106, but they have to make the same maximum speed in order to maintain the schedule. Trains 101, 102, 103 and 104 are what are known as local trains and 105 and 106 are through trains. Train 105 starts from Kansas City and runs to Jacksonville, Florida; couldn't say whether the entire train goes through, but the sleepers go through, and, I believe, all but one baggage car. The territory under my jurisdiction is the Ozark Division, between Springfield and Memphis. That division runs through Mountain Grove. The equipment on trains 105 and 106 is heavy steel equipment. The equipment used on these other four trains is lighter, and in some
cases it is wooden equipment and in other cases it is equip-
44 ment with steel under frames. The regular train of 103 and 104 is six cars and of 101 and 102 is three cars. If either 105 or 106 slows down and makes a flag stop and then starts on again, it will lose about five minutes of its running time; that is, it will arrive at a given point five minutes later that it would without that stop; and to that five minutes you add the amount of time spent at the station where the stop is made. If that train makes several stops of that character, it loses at least five minutes for each stop, and the effect of that loss of time on the train reaching its terminal is to make it just that much later unless it is able to regain it. A delay of five minutes in the running time of train 105 would not cause it to fail to make its connection at Memphis if it didn't have any other delay; it would be possible to overcome that; but the train is carded as fast as we figure we are justified in carding it to take care of operating conditions. The time of train 106 has been shortened; the schedule is fifteen minutes faster from Memphis to Springfield than it was before. Under ideal operating condition we could not make up fifty minutes between Springfield and Memphis; could possibly make up

twenty minutes if conditions were favorable. Train 105 now makes the following regular stops between Kansas City and Birmingham: Paola, La Cygne, Pleasanton, Fort Scott and Arcadia, Kansas; Lamar, Springfield, Willow Springs, West Plains, Thayer and Mammoth Springs, Missouri; Hoxie and Jonesboro, Arkansas; Memphis, Tennessee; New Albany, Tupelo and Amory, Mississippi; Jasper, Alabama. In addition to these stops, train 105 stops between Springfild and Memphis twice for railroad grade crossing. Don't
45 think we have a flag stop for that train between Springfield and Memphis; they are all regular stops. If, in addition to all of these stops between Kansas City and Memphis, train 105 stopped at Mountain Grove as a regular stop, this fact alone would not necessarily interfere with our connections at southern points if the train was on time.

J. N. CORNATZER testified for defendants:

Am general passenger agent for the Director General of Railroads —St. Louis-San Francisco Railroad—and have been since January 1, 1918. Prior to that time was general passenger agent for the Frisco Railroad. Have been connected with the passenger department of the Frisco about twenty years. Since January 1, 1918, the St. Louis-San Francisco Railroad has been operated by the United States Railroad Administration. The St. Louis-San Francisco Railway Company, the corporation, has nothing to do with the operation of the road since January 1, 1918, and has nothing to do with it at the present time. Was assistant general passenger agent and general passenger agent at Memphis sixteen years, and am familiar with the line of the Frisco from Kansas City via Springfield, Mountain Grove and Memphis to Birmingham, Alabama. Am familiar with trains 105 and 106. These trains are known as the Kansas City-Florida Special and handle sleeping cars during the winter months from Kansas City to Jacksonville, Florida, via Birmingham and the Southern Railway. During the summer season those cars have been extended to Denver, Colorado, via the Rock Island from Kansas City.
Those trains handle sleepers between Springfield, Missouri,
46 and Birmingham, Alabama, and also a local sleeper between Kansas City and Memphis. They handle dining cars between Kansas City and Fort Scott and between Jonesboro, Arkansas, and Birmingham, Alabama. They handle a chair car, partition coach, sixty-foot mail car and express car between Kansas City and Memphis. The trains are all steel and are operated for long distance traffic. They are operated on a fast schedule and are fast through interstate trains between Kansas City, Missouri, Memphis, Tennessee, and Birmingham, Alabama. The same equipment that leaves Kansas City on train 105 runs through to Birmingham, Alabama, with the exception of a change in the postal car at Memphis, Tennessee, and on the run in the other direction the same equipment runs through from Birmingham to Kansas City. Train 106 is due to arrive at Kansas City at 10:25 a. m. and its first connection, which is the important connection, is Rock Island No. 25, leaving Kansas

City at 10:35 a. m.; that is the train that receives from No. 106 during the summer months the sleeper for Colorado. The next connection is Union Pacific No. 2, leaving Kansas City at 10:40 a. m., and Santa Fe No. 1, leaving Kansas City at 10:55 a. m.; those are the three close connections. The next connection is Burlington No. 1 at 11:35. Train 106 also carries through express matter and United States mails for Kansas City and points beyond. As to the effect that stopping train 106 either on flag or as a regular schedule stop at Mountain Grove would have on its connections at Kansas City, will say the schedules of trains 105 and 106 are very hard to maintain and our management is continually watching the speed of those trains. Our connections at Birmingham are absolutely ar-
47 bitrary, and the same is true at Kansas City. It is not possible for our connections at Kansas City to change without affecting other big terminals. Trains 105 and 106 are operated to handle long-distance traffic and if we should break the connections, more especially at Birmingham, with the Southern Railway, we would not have sufficient traffic between Kansas City and Memphis to operate the trains between Memphis and Birmingham. The Southern Railway's connection at Birmingham is the most important connection we have there. Prior to November 17, 1918, train 106 at times stopped at Mountain Grove on flag. Prior to that date the Rock Island connection at Kansas City left there about fifteen minutes later than it does now, and on or about that date its leaving time was moved up fifteen minutes so as to cut down the time that existed between the arrival of Frisco train 106 at Kansas City and the leaving time of this Rock Island connection. The first connection of train 105 out of Memphis is Y. & M. V. train 13, leaving at 8:10 a. m., which is the arriving time of train 105. The Y. & M. V. uses the same station as the Frisco does at Memphis. The most important connection of train 105 is Southern No. 24, leaving Memphis at 8:30 a. m. from the Union Station, which is about three blocks from the Frisco Station, and it hurries us to get our passengers from train 105 over to Southern train No. 24 within the twenty minutes' time. Illinois Central No. 123 leaves Memphis at 8:15 a. m. from the same station that the Frisco uses; Illinois Central No. 103 at 9:25 a. m., and Rock Island No. 45 at 9:30 a. m., and after that the connections spread out. These connections at Mem-
phis that I have described are connections for passengers for
48 Vicksburg and Jackson, Mississippi, New Orleans, Chattanooga, New York and all eastern points. Train 105 is due to arrive at Birmingham at 4:20 p. m. L. & N. No. 3 leaves Birmingham at 4:20 p. m. from a separate station. Central of Georgia No. 10 leaves Birmingham at 4:25 p. m., and Southern Railway No. 24 at 4:35 p. m. from the same station that Frisco 105 enters, and then the connections spread out. These are the important connections at Birmingham. Trains 105 and 106 are operated to accommodate long-distance traffic; these trains could not be operated for local traffic; we would have to discontinue the service. Trains 101, 102, 103 and 104, which now stop at Mountain Grove, are local trains and designed to accommodate local traffic. I consider that

these four trains as they are now operated furnish fair and reasonable service to the traveling public into and out of Mountain Grove. I cannot under any conditions, and never have agreed with the contention of the Mountain Grove people during the years that we have had some argument about these trains, that these fast through heavy trains that are operated for this long-distance traffic, which are the connecting links between Kansas City, Missouri, and Birmingham, Alabama, from the west to the south, should be burdened with local traffic between Mountain Grove and Springfield. I cannot see that there is any good reason why the Mountain Grove people should insist on service of that kind, with the service that the other trains afford. It would not be possible at this time to segregate or ascertain from the records of tickets sold at Mountain Grove the percentage of passengers which boarded trains 105 or 106 at Mountain Grove, or to determine the number of passengers or the number of tickets sold for those trains during the year 1918 prior to November 17th, for the reason that we didn't make a record of that kind when those trains did stop at Mountain Grove for certain travel. I have made an effort to get this information, but know of no way in which to get it if the conductors' reports have been destroyed, and they have been. Between Memphis, Tennessee, and Birmingham, Alabama, there are the following railroad grade crossings at which trains 105 and 106 are required to stop: Holley Springs, New Albany and Tupelo, Miss.; Jasper and Pratt City, Alabama. I am not well enough acquainted with the line between Springfield and Kansas City to state the number of railroad grade crossings without the aid of a time card of the Northern Division. Our most important connection at Kansas City is Rock Island No. 25, leaving at 10:35 a. m., which gives us a fifteen-minute connection there, and if the sleeper is operated through to Colorado, that car has to be switched. Our most important connection at Memphis is Southern No. 24, which is twenty minutes, and we have a big traffic. We have shorter connections than that at Memphis, Y. & M. V. leaving at 8:10 and Illinois Central at 8:15; but I don't put the importance on those connections that I do on the Southern. By importance of the connections, I refer to the interchange of passenger traffic, express and mail. We don't worry about holding the train for express, but if a passenger train arrives at a station before another train leaves, that train has to wait and get the mail from the incoming train under the postal law.

Cross-examination:

Think the Rock Island changed the time of departure of its train No. 25 from Kansas City fifteen minutes prior to November 17, 1918. At the time train 106 was making the flag stop at Mountain Grove we had only a paper connection with the Rock Island at Kansas City which departed from there at 10:35; it showed on the card but we didn't make it. We did not frequently miss that connection but did at times, but the connection was so close that even if we were on time the connection was not satisfactory. The fact of

our having stopped 106 on flag at Mountain Grove had a bearing on our missing our connection with the Rock Island train at Kansas City as well as having a bearing on Frisco No. 7 at Springfield for the southwest. As to whether it was possible for us to make up that five minutes' time between here and Kansas City, I can only say that the train did not always arrive at Kansas City on time; am not prepared to say what the delays were. Since we have quit making the flag stop at Mountain Grove the train is doing better in making its connection at Kansas City. The fact that the train doesn't stop at Mountain Grove helps the service of the train. We have done some other things that helped the train; we fine-tooth-combed the railroad to see what we could do and did everything to put those trains on time. Train 106 remains at Springfield five minutes, it is due there at 4:35 and leaves at 4:40. It is quite possible it remains at Springfield more than five minutes. Can't say that I remember of a single instance when we missed our connection at
Kansas City with the Rock Island train prior to November
51 17, 1918, from the reason of having had to stop at Mountain
Grove. We don't make any stops on trains 105 and 106 that we feel we don't have to or are not justified in making. Don't believe that stopping trains 105 and 106 at Mountain Grove to handle local business to Springfield is justified. Springfield is a big connection point for the Frisco railroad with all of its divisions and handles lots of through business to Jacksonville, New Orleans and all the southeast. The passenger traffic between Springfield and Mountain Grove is short local travel and there is a passenger train just ahead and just behind these two fast trains, that was put on for the exact purpose of doing the local travel between those points. Passenger traffic going a long distance from the west to Jacksonville, Florida, could not be called local travel or traffic. Passenger traffic from Springfield to Memphis is long distance passenger traffic. We cannot get train 106 into Kansas City any later than we do now and make our connections. We would lengthen the running time of the train if we could. It is almost impossible for our passengers to transfer at Kansas City now in ten minutes. I wouldn't say that the Rock Island train would necessarily be held for us to make this connection provided we were only five minutes late; couldn't answer for the Rock Island, know they do go and leave us. It is hard for us to maintain our schedule on trains 105 and 106 because the speed is too fast. Our management considers the speed of these trains between Springfield and Birmingham as very fast, the average running time of train 105 between Springfield and Memphis is 32.6
miles an hour and that of 106 is 32.4 miles an hour. I am
52 familiar with the running schedules of trains on other roads
and don't know of any roads that exceed that rate of speed with the same curvature we have. If train 105 is delayed in arriving at Memphis on account of having to stop at Mountain Grove for a period of five minutes some of our connections will not wait for us at Memphis. Our important connection at Memphis is Southern No. 24 leaving at 8:30; we interchange a great traffic with that line and we can't get the Southern Railway to hold its train for train 105. Our interchange with Y. & M. V. train that leaves Mem-

phis at 8:10 is too small and I don't think that train would wait for 105. Stopping train 105 regularly at Mountain Grove for a period of five minutes to take on and discharge passengers might cause us to miss our connections at Birmingham or other points. It is a general rule among railroads that where the delays are not too great they will wait for their connections. Southern No. 24 has left us when we were pulling into the station at Memphis and they were pulling out of there; they don't observe the rule or custom of waiting for their connections as regularly as most other railroads; that is because their train No. 24 is their fast New York train.

Examiner Patterson: I want to make this statement for the record and for the information of the parties in this case that all of the actions, rulings and orders of the Examiner holding this hearing are subject to the confirmation and approval of the Public Service Commission when this record is submitted to them, as provided for by the Public Service Commission Law. And the case will be submitted on the evidence.

53 Whereupon the hearing in the above case was closed.

Afterwards, on May 26, 1919, respondent made and entered its report and order in said case, as follows (caption omitted):

Report of the Commission.

"By the Commission:

"This is an application filed on behalf of the citizens of Mountain Grove, Missouri, asking for the stopping of certain passenger trains operated by the St. Louis-San Francisco Railroad at Mountain Grove, Missouri, for the purpose of taking on and discharging passengers.

"The cause was set down for hearing at Mountain Grove, Missouri, on the 15th day of March, 1919, before a Special Examiner for the Commission, who had theretofore been duly appointed by the Commission in accordance with the provisions of Section 119, Public Service Commission Law. A full transcript of the proceedings had at such hearing has been submitted to and considered by the Commission, and the following statement of findings of fact is adduced therefrom.

"The town of Mountain Grove, Missouri, is located in the southwestern portion of Wright County, Missouri. It has a population of approximately 2,500 persons, contains a number of banks, stores of various kinds and electric light and telephone facilities. A creamery and soda water plant doing business of approximately $900,000 a year, a wholesale grocery doing a business of approximately $300,-
000 a year, persons engaged in the handling of dairy prod-
54 ucts with a volume of approximately $300,000 a year, grain milling business with a volume of approximately $200,000 a year, lumber interests doing a business of approximately $100,000 a year, shipments of live stock approximating a value of $100,000

a year, and in addition to these the State Fruit Experiment Station and the State Poultry Experiment Station are located at this point. There is also an overall factory employing in the neighborhood of fifty girls and with a volume of bank business estimated at $800,000 per year.

"The trade territory is estimated at from thirty to fifty miles north and northeast and twenty-five to forty miles south and south west.

"Visitors from all parts of the State, and from various portions of the United States go to Mountain Grove for the purpose of visiting the Experiment Stations for fruit and poultry, as above described.

"The defendant has in operation on its line of railroad between Springfield, Missouri, and Memphis, Tennessee, this being the line that passes through Mountain Grove, three regular passenger trains in each direction each day, all of which trains have their origin or destination at Kansas City, Missouri, in the west and run through to or beyond Memphis, Tennessee, in the south. For railroad operating purposes these trains are referred to as north and southbound.

"Below is shown a schedule of the operation of these trains from Kansas City to Thayer, Missouri. All of these trains stop at
55 Mountain Grove, Missouri, except trains Nos. 105 and 106 and it is stopping of these trains that is at issue in this cause.

Southbound.				Northbound.		
105	103	101		102	104	106
5.30	11.40	10.40		5.00	7.10	10.25
P. M.	P. M.	A. M.	Kansas City	P. M.	A. M.	A. M.
11.36	7.50	8.00		7.40	8.30	4.35
P. M.	A. M.	P. M.	Springfield	A. M.	P. M.	A. M.
1.34	10.30	11.05		4.45	5.55	2.45
A. M.	A. M.	P. M.	Mountain Grove	A. M.	P. M.	A. M.
3.50	1.15	2.00		1.10	2.50	12.50
A. M.	P. M.	A. M.	Thayer	A. M.	P. M.	A. M.

"Trains Nos. 101 and 102 consist of three cars and are operated with a light class of motive power. Trains Nos. 103 and 104 consist of six cars, either of wooden construction or light steel or wooden bodies with steel underframes. Trains Nos. 105 and 106 consist of seven cars of all steel construction. The same class of motive power is used for the operation of trains Nos. 103 and 104 and 105 and 106.

"Trains Nos. 105 and 106 are known as the Kansas City-Florida Special. With the exception of a slight change in the make up of the train at Memphis and Birmingham they operate through in connection with the Southern Railroad and in the summer season, when traffic is heavy in the western direction, these trains carry a

through sleeper that is delivered at Kansas City to the Rock Island Railroad for movement to Denver, Colorado.

"While operating between Springfield and Thayer, these trains maintain an average schedule as follows:

56 "Train 101, 22.9 miles; 102, 20.7 miles; 103, 25.4 miles; 104, 24.4 miles; 105, 32.6 miles, and 106 32.4 miles. The figures given being in miles per hour and including stops. The trains are not permitted to operate in excess of fifty miles per hour, and it is estimated that while running, the actual time is very close to this figure.

"Trains Nos. 105 and 106 are required to make certain connections at terminals in order to secure the traffic of through passengers, and the most important of these connections are shown as follows:

"Train No. 106 arrives at Kansas City at 10:25 a. m. Rock Island Train No. 5 leaves Kansas City at 10:35 a. m. Union Pacific Train No. 2 leaves Kansas City at 10:40 a. m. and Santa Fe Train No. 1 leaves Kansas City at 10:55 a. m. These trains are all destined to the West. In the opposition direction Train No. 105 reaches Memphis at 8:10 a. m. and Y. & M. V. Train No. 13 leaves from the same station at the same time. Southern Train No. 24 leaves Memphis at 8:50 a. m. from the Union Station, about three blocks distant from the station at which Train No. 105 arrives. Illinois Central Train No. 123 leaves Memphis at 8:15 and Illinois Central Train No. 103 at 9:25 and Rock Island Train No. 45 at 9:30 a. m., all from the same station as that used by Train No. 105.

"These trains carry passengers for Mississippi points, New Orleans, Chattanooga, Tennessee, New York and other points east.

"Train No. 105 is due at Birmingham at 4:20 p. m. L. & N. Train No. 3 leaves Birmingham at the same hour from a separate station. Central of Georgia No. 10 leaves Birmingham at
57 4:25 p. m. and Southern Train No. 24 at 4:35 p. m., all being from the same station.

"The evidence shows that the management of the Frisco Railroad are of the opinion that Trains Nos. 105 and 106 are now scheduled as fast as safe operating conditions will permit.

"The evidence shows that prior to November 17th, 1918, Train No. 105 stopped at Mountain Grove, Missouri, on flag, for passengers from Springfield or beyond, and for passengers destined to Memphis and south, and that this stop has been made for a number of years, and as a result No. 105 stopped practically every day. No. 106 stopped to let off passengers from Memphis, and there were not as many stops as on Train No. 105.

"Various estimates were given of the number of passengers using Trains Nos. 105 and 106, but no accurate data could be furnished, as the records of the railroad company are not maintained in such a manner as to permit this information to be furnished, unless called for within one week from the date desired; that is, the only manner in which this could be definitely ascertained would be an examination of the train conductor's report, and his tickets are dis-

tributed and reports destroyed within a week after the same are made.

"Representatives of the railroads testify that Trains Nos. 105 and 106 could both make the stops at Mountain Grove and still make their connections at both ends of the lines if no other operating difficulties were encountered. It is shown that the average custom of the railroads is to hold trains for important connections at least thirty minutes, but this is not universally followed, and
58 especially is this true on the part of the Southern Railroad, and if Train No. 105 was delayed from other causes, then add an additional delay by reason of a stop at Mountain Grove, it might result in the missing of the connection.

"The evidence shows that the actual running time of trains Nos. 105 and 103 between Willow Springs and Olden, a distance of 12.8 miles, is exactly the same, although train No. 103 must make stops at Burnham, Pomona and Olden. This was explained by the assistant superintendent on the assumption that the schedule was improperly arranged between these points and that it is practically impossible for the trains to make the time. By reference to official time table No. 1, effective November 17th, it is found that three minutes' additional time was given train No. 105 after November 17th between these points; that is, while train No. 5 now takes twenty-six minutes from Willow Springs to Olden, when this schedule was first arranged, it was given but twenty-three minutes and no change has been made in the running time of train No. 103, so that, if there is an error in these schedules, more than sufficient time has elapsed for same to be corrected.

"The evidence shows that there is a difference of seventy-one minutes in the running time of trains Nos. 103 and 105, between Springfield, Missouri, and Thayer, Missouri, and that train No. 103, with one less car and somewhat lighter in weight, makes fourteen regular stops and eight flag stops in addition to those made by train No. 105, indicating that the average time for starting and stopping and getting back under way is less than four minutes per stop. The defendant's evidence is to the effect that this flag
59 stop at Mountain Grove was eliminated on November 17th by reason of the necessity of making faster time by cutting down the schedule from Kansas City to Memphis and Birmingham. The defendant could not offer in evidence, at the time, the previous time cards, but it was agreed that such time cards as were in the office of the Commission should be used for comparative purposes. A check of the Commission's record indicates that time cards 34, 35 and 36, which were the three time cards just prior to November 17th, were filed for all divisions of the Frisco, except the Ozark division, and it has been necessary to use the Official Guide, a publication adopted by all of the railroads in the United States for the showing of the running time of passenger trains, in order to make this comparison, and the last Guide available prior to November 17th is dated in July, 1918. This card shows that train No. 105 was scheduled to leave Springfield at 11.36 p. m., stopping on flag at Mountain Grove, Missouri, making all other stops now shown, leav

ing Thayer at 3.45 a. m. The present card, which was effective March 2nd, 1919, and shown as Supplement B to Time Table No. 2, shows that train No. 105 leaves Springfield at 11.36 p. m. and leaves Thayer at 3.55 a. m., so that, at the present time, there is ten minutes more time between Springfield and Thayer, a distance of 137.8 miles, than was available for this train when it made the stop at Mountain Grove.

"The July Guide shows that Train No. 106 left Thayer at 12.10 a. m. and arrived at Springfield at 4.35 a. m. At the present time this train leaves Thayer at 12.20 a. m. and reaches Springfield at 4.35 a. m., so that a considerable shortening of this schedule has been made, but by referring to Card No. 1, effective Novem-
60 ber 17th, it will be seen that this change has been made since the flag stop was eliminated, as on that date the leaving time of Train No. 106 from Thayer was 12.05 a. m. and its arrival at Springfield 4.35 a. m., so that at the date of the change there was actually placed on the running time fifteen minutes more than now exists and five minutes more than was in use when the train was stopping at Mountain Grove on flag.

"Springfield, Missouri, is the trade center for this territory and from this point lines of the Frisco and other railroads radiate in all directions.

"Passengers to and from Mountain Grove, Missouri, to Kansas City and the west, to the lead districts in Jasper County, and to St. Louis and other portions of Missouri, reached via that gateway, must pass through Springfield, and the evidence shows that a large number of the trains used in reaching these points leave Springfield prior to the arrival of Train No. 104 northbound, and arrive at Springfield after the departure of trains Nos. 101 or 103 southbound.

Conclusions.

"As said by the Court in State ex rel. Missouri Pacific Railroad Company et al. v. Public Service Commission of Missouri, 201 Southwestern, 1144 l. c.:

" 'This case turns wholly upon the facts; for the law, so far, at least, as concerns its general terms, is well settled.'

"The right of the Commission to order the stopping of interstate trains, where such service is necessary to provide reasonable
61 facilities for towns not otherwise properly served, has also been determined in State ex rel. M., K. & T. Railroad v. Public Service Commission, not yet reported, and in Lusk v. Public Service Commission, not yet reported, so that it will be unnecessary to discuss this feature at this time.

"The evidence shows, and the Commission finds, that Mountain Grove, Missouri, is one of the best towns located upon the line of the St. Louis-San Francisco Railroad between Springfield, Missouri, and the Arkansas State line. That at the present time it is served

by two passenger trains daily in each direction; one passing at an early hour in the morning and the other in the late afternoon, in a northbound direction, and trains passing near the midday and mid night hour in a southbound direction. These are local trains stopping at practically every station and not rendering through service where that term is used in the sense of fast time. Leaving Mountain Grove at 4.45 in the morning on Train No. 102, a pas senger does not reach Kansas City until 5 o'clock p. m., this train requiring twelve hours and fifteen minutes, while Train No. 10 covers the same distance in seven hours and forty minutes. In the reverse direction Train No. 103 is in service eleven hours from Kansas City to Mountain Grove, while Train No. 105 is in service but eight hours.

"The Commission finds from the evidence that trains Nos. 10 and 106 are through fast interstate trains, having important con nections at both terminals.

"The Commission further finds that to stop these trains at Moun tain Grove would not, by reason of such stop, cause said train
62 to miss their connections at either end of the line. The Com mission finds that train No. 105 has the same running time between Willow Springs and Olden, a distance of 12.8 miles, as train No. 103; that train No. 103 is required to make three stops within this distance and the time cards of the defendant company indicate that since this schedule was changed in November, an addi tional three minutes time has been given train No. 105 between these points. An examination of the schedule, which is before the Commission, shows that at all other points there is a wider spread between the time of these two trains. As an example, from Southern Junction to Palmetto, both points located upon this same division distant 13.2 miles apart, the running time of train No. 103 is twenty eight minutes. It makes one regular and two flag stops, while train No. 105 is given but twenty-two minutes between these same points. From Cedar Gap to Macomb, a distance of 12.3 miles, train No. 1 has twenty-seven minutes and must make one stop and one flag stop. Train No. 105 has twenty-two minutes and by rule of the schedule it must slow down, passing Mansfield to eight miles per hour. It appears to the Commission that the schedule is so arranged at the present time as to permit train No. 105 to stop at Willow Spring and upon its regular schedule gain sufficient speed to make up the time thus lost before reaching West Plains.

"The evidence shows and the Commission finds that there is no necessity for the stopping of train No. 105 at Mountain Grove for the handling of passengers from Springfield and points north, and as the evidence clearly indicates that this would be equivalent to a positive stop order it is unnecessary to go into the question of
63 the necessity of this train stopping at Mountain Grove to pick up passengers for points south.

"In a northbound direction train No. 106 passes Mountain Grove at 2:45 a. m., while train No. 102 passes at 4:45 a. m. It is evident that for passengers destined Springfield, Missouri, there is little neces sity for this train stopping nor is there any necessity for this train

stopping for passengers having origin within the State originating south of Willow Springs. The evidence does show that this train should stop on flag at Mountain Grove for the purpose of discharging passengers originating at points in Arkansas and south thereof. For passengers destined north, southwest or west of Springfield, there is an urgent necessity for the stopping of train No. 106 at Mountain Grove. The important connections in these directions leave Springfield before the arrival of train No. 102, and, therefore, the service upon train No. 106 is necessary or the passengers are required to move upon train No. 104 the previous evening, spending the night at Springfield.

"From all the evidence in this case the Commission finds that the defendant company should be required to stop train No. 5 at Mountain Grove as a regular stop; that it should be required to stop train No. 106 at Mountain Grove to let off passengers originating south of the Arkansas state line and to take on passengers who have purchased tickets to destinations beyond Springfield, Missouri, and an order in accordance herewith will issue."

64 *Order of the Commission.*

"This cause being at issue upon complaint filed and answers thereto and full hearing having been had of the things and matters involved and a transcript of the evidence had at such hearing having been submitted to and considered by the Commission and the Commission having filed a report containing its findings and conclusions which are made a part hereof, it is:

"Ordered: 1. That the defendant, the St. Louis-San Francisco Railroad, provide for the stopping of its southbound train No. 105 at Mountain Grove, Missouri, for the purpose of taking on and discharging passengers at that point.

"Ordered: 2. That the defendant, St. Louis-San Francisco Railroad provide for the stopping of northbound train No. 106 at Mountain Grove, Missouri, on flag or signal for the purpose of letting off passengers who board said trains at point south of the Arkansas state line, and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri.

"Ordered: 3. That this order will be in full force and effect on and after the 16th day of June, 1919.

"Ordered: 4. That certified copy of report and order herein shall be served upon the complainant and upon the St. Louis-San Francisco Railroad, Hon. Walker D. Hines, Director General of the United States Railroad Administration, and Hon. B. F. Bush, Regional Director of the Railroad Administration of the United States.

"Ordered: 5. That the defendant shall notify the Commission within ten days, as prescribed by the Public Service Com-
65 mission Law, that this order is accepted and will be obeyed."

Afterwards, on June 16, 1919, defendants in said case duly filed with respondent their motion for rehearing therein, as follows (caption and signatures omitted):

Defendants' Motion for Rehearing.

"Come now St. Louis-San Francisco Railway Company and Walker D. Hines, Director General of Railroads, St. Louis-San Francisco Railroad, defendants in the above-entitled cause, and respectfully move the Commission to set aside its order made herein on the 26th day of May, 1919, and grant defendants a rehearing in this cause, for the following reasons:

I.

"Because the Commission erred in appointing a Special Examiner, not a member of the Commission, to conduct the hearing of this cause, and the order of the Commission dated March 14, 1919, appointing A. Z. Patterson as Special Examiner for the Commission to conduct the hearing of said cause was unauthorized and without authority in law.

II.

"Because the order of the Commission made herein on May 26, 1919, is not supported by the evidence adduced on the hearing of said cause.

III.

"Because said order of the Commission herein, dated May 26, 1919, is unlawful, unjust, unreasonable, oppressive and void, 66 in that the evidence adduced in this cause shows that defendants are now furnishing the City of Mountain Grove, Missouri, and the inhabitants thereof, reasonable, adequate and sufficient passenger train service without the stopping of trains numbered 105 and 106, as ordered by the Commission.

IV.

"Because the order of the Commission made herein is in conflict with and violates Section 8 of Article I of the Constitution of the United States, in that the effect of said order is directly to burden and interfere with interstate commerce.

V.

"Because the order of the Commission made herein violates Section 21 of Article II of the Constitution of Missouri, in that the effect of said order is to take and damage the private property of these defendants for public use, without just compensation.

VI.

"Because the order of the Commission made herein violates Section 30 of Article II of the Constitution of Missouri, in that by said order these defendants are deprived of property without due process of law.

VII.

"Because the order of the Commission made herein violates Section 1 of Article XIV of the Amendments to the Constitution of the United States, in that these defendants are by said order deprived of property without due process of law, and are denied the equal protection of the laws."

Which said motion for rehearing was, on June 17, 1919, in all things overruled by respondent.

Thereupon said cause was taken under advisement by the Court, and thereafter, on the 16th day of September, 1919, and during the same June Term, 1919, of said Circuit Court of Cole County, the Court rendered and caused to be entered its judgment, order and decree therein, affirming said order of the said Public Service Commission of the State of Missouri, being the order under review in this cause.

Thereafter, on the same day and at the term last aforesaid, to wit, on the 16th day of September, 1919, and within four days after the rendition of said judgment, order and decree, plaintiffs duly filed their motion for a new trial in said cause, as shown by entry of record made at the time, which said motion is in words and figures as follows (caption and signatures omitted):

Plaintiffs' Motion for New Trial.

"Come now plaintiffs and move the Court to set aside the judgment heretofore rendered in this cause and to grant them a new trial herein, for the reasons following:

"First. Because the finding and judgment of the Court are against the law.

"Second. Because the finding and judgment of the Court are against the evidence.

"Third. Because the finding and judgment of the Court are against the law and the evidence, and are against the weight of the evidence.

"Fourth. Because the finding and judgment of the Court should have been for plaintiffs.

"Fifth. Because the Court erred in affirming the order entered by defendant in the cause.

"Sixth. Because the Court erred in its finding and judgment in requiring plaintiffs to stop their south-bound interstate passenger train No. 105 at Mountain Grove, Missouri, for the purpose of taking on and discharging passengers at that point, and in affirming the order of defendant in that respect.

"Seventh. Because the Court erred in its finding and judgment in requiring plaintiffs to stop their northbound interstate passenger train No. 106 at Mountain Grove, Missouri, on flag or signal, for the purpose of letting off passengers who board said train at points south of the Arkansas state line, and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri, and in affirming defendant's order in that respect.

"Eighth. Because the finding and judgment of the Court in requiring plaintiffs to stop said interstate passenger trains Nos. 105 and 106 at Mountain Grove, Missouri, and the order of defendant in that respect, are unreasonable and void.

"Ninth. Because the finding and judgment of the Court requiring plaintiffs to stop their southbound interstate passenger train No. 105 at Mountain Grove, Missouri, for the purpose of taking on and discharging passengers at that point, and to stop their northbound interstate passenger train No. 106 at Mountain Grove, Missouri, on flag or signal, for the purpose of letting off passengers who board said train at points south of the Arkansas state line, and for the purpose of taking on passengers holding tickets for points be-
69 yond Springfield, Missouri, and in affirming the order of defendant in that respect, are in conflict with Section 8 of Article I of the Constitution of the United States, in directly burdening and interfering with interstate commerce, contrary to the provisions of said section giving to Congress the power to regulate commerce among the several states.

"Tenth. Because the finding and judgment of the Court in requring plaintiffs to stop their said interstate passenger trains Nos. 105 and 106 at Mountain Grove, Missouri, as aforesaid, and in affirming the order of defendant in that respect, are confiscatory, take and damage the private property of these plaintiffs for public use without just compensation, take the property of plaintiffs without due process of law, and deny to plaintiffs the equal protection of the laws, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, and of Sections 21 and 30 of Article II of the Constitution of Missouri.

Eleventh. Because under the law of this State defendant had not and has not jurisdiction or authority to make and enter an order requiring plaintiffs to stop their said interstate passenger trains Nos. 105 and 106 at Mountain Grove, Missouri.

"Twelfth. Because under the law creating the Public Service Commission, known as the Public Service Commission Act, a hearing must be held by the Commission or a member thereof, and the

order of defendant appointing A. Z. Patterson as Special Examiner for the Commission to conduct the hearing of said cause was unauthorized and without authority in law.

"Thirteenth. Because upon the entire record it appears
70 that the passenger service afforded by plaintiffs for the City of Mountain Grove, Missouri, is reasonable, adequate and sufficient without the stopping of said interstate passenger trains Nos. 105 and 106 thereat, as required by the order of defendant."

Thereafter, on the same day and at the term last aforesaid, to wit, on the 16th day of September, 1919, and within four days after the rendition of said judgment, order and decree, plaintiffs duly filed their motion in arrest of judgment in said cause, as shown by entry of record made at the time, which said motion is in words and figures as follows (caption and signatures omitted):

Plaintiffs' Motion in Arrest of Judgment.

"Come now plaintiffs and move the Court to arrest the judgment herein, for the reasons and on the grounds following:

"First. Because on the entire record the finding and judgment should have been for plaintiffs

"Second. Because defendant was without authority or jurisdiction to make the order entered in this cause.

"Third. Because the finding and judgment of the Court, and the order of defendant, tend to and do directly burden, interfere with, and obstruct interstate commerce, in violation of the provisions of Section 8 of Article I of the Constitution of the United States.

"Fourth. Because the finding and judgment of the Court, and the order of defendant herein, take and damage private property of these plaintiffs for public use without just compensation, deprive plaintiffs of their property without due process of law, and
71 deny to them the equal protection of the laws, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, and of Sections 21 and 30 of Article II of the Constitution of Missouri."

Thereafter, on the 16th day of September, 1919, and during the same June Term, 1919, of said Court, said motion for new trial was taken up by consent of the parties, and the same was by the Court overruled, as shown by entry of record made at the time, to which action of the Court in overruling said motion for new trial plaintiffs, by their counsel, then and there duly excepted at the time.

Thereafter, on the same day and at the same term last aforesaid, plaintiffs' said motion in arrest of judgment was taken up by consent of the parties and said motion was by the Court overruled, as shown by entry of record made at the time, to which action of the

Court in overruling said motion in arrest of judgment plaintiffs, by their counsel, then and there duly excepted at the time.

Thereafter, on the same day and at the same term last aforesaid, plaintiffs filed their affidavit and application for appeal to the Supreme Court of Missouri, and the Court thereupon duly allowed plaintiffs an appeal to the Supreme Court of Missouri, and granted plaintiffs — days in which to perfect and file their bill of exceptions herein, all as shown by entry of record made at the time.

In order that the above matters and things, rulings and exceptions, may be made a part of the record in this cause, plaintiffs here present their bill of exceptions within the time heretofore al-
72 lowed for that purpose, and pray that the same may be approved, signed, sealed, filed and made a part of the record herein, all of which is accordingly done on this 16th day of September, 1919, and during the June Term, 1919, of said court.

(Signed) J. G. SLATE, [SEAL.]
Judge of the Circuit Court of Cole County, Missouri.

Respectfully submitted,

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Appellants.

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75 And thereafter, on the 23rd day of April, 1920, the following proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 2, April Term, 1920.

(No. 21862.)

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Come now the said parties, by their respective attorneys, and after arguments herein submit this cause to the Court.

And thereafter, on the 15th day of December, 1920, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 2, October Term, 1920.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appeal from the Circuit Court of Cole County.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Cole County rendered, be in all things affirmed and stand in full force and effect; and that the said respondent recover against the said appellants its costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in the words and figures following, to-wit:

76 In the Supreme Court of Missouri, Division Number Two, October Term, 1920.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appeal from the Circuit Court of Cole County, Missouri.

Facts.

This case comes here on a writ of review of a judgment of the circuit court of Cole County, affirming an order of the Public Service Commission.

The complaint filed with the Commission upon which its order was based, is as follows:

"Now comes the Commercial Club of Mountain Grove, Missouri, and respectfully shows to the Commission that this Club is a voluntary organization of the business men and citizens of the city of Mountain Grove, organized for the development of said city. Your petitioner further states that at a regular meeting of said Commercial

Club the undersigned A. F. Collier, was appointed chairman of a committee for the purpose of instituting the necessary proceedings to cause the St. Louis-San Francisco Railroad to regularly stop trains Nos. 105 and 106 at Mountain Grove, Missouri."

"Your petitioner further states that the St. Louis-San Francisco Railroad is a corporation organized under the laws of the state of Missouri and is engaged in the operation of a line of railroad between points in Missouri and points in the states of Arkansas, Kansas, Oklahoma, etc., and specifically that it operates a line of railroad from Kansas City, Missouri, through Springfield, Missouri; thence through Webster, Wright, Texas, Howell and Oregon counties to points in Arkansas and other states, and that said line of rail-
77 road passes through Mountain Grove, Missouri. That in operation of such line of railroad said company is a common carrier engaged in the transportation of freight and passengers for hire, as defined by the laws of the state of Missouri. That at the present time the properties of said St. Louis-San Francisco Railroad are under the control of and being operated by Walker D. Hines as Director General of Railroads, United States Railroad Administration, under and by virtue of an appointment by the President of the United States, he is responsible for the operation of the trains of said co-defendant at the present time."

"For cause of action your petitioner shows that Mountain Grove, Missouri, is an important and growing city in the southern part of the state of Missouri and that the passenger traffic in and out of said point is extremely heavy, and that the proper growth and development of Mountain Grove, Missouri, is dependent upon better passenger service being furnished than is now operated by the defendants herein."

"Your petitioner further alleges that for a long time past the defendant, company, did stop trains Nos. 105 and 106 at Mountain Grove, Missouri, on flag for passengers to and from Springfield on the west and for passengers to or from certain points south, but about sixty days ago a change in train schedules was made by said St. Louis and San Francisco Railroad and as a result thereof, trains Nos 105 and 106 do not now stop at Mountain Grove, to the detriment of your petitioners and the city of Mountain Grove."

The prayer was for a hearing to enable the petitioner to show the necessity for the regular stopping of said trains and such order or orders in the premises as appeared proper to the Commission.

To this complaint the Railroad filed its separate answer denying that it had anything to do with the operation of said railroad and averred that since January 1, 1918, it is now, and has been continuously operated by the Director General of Railroads appointed as such by the President of the United States.

The Director General filed a separate answer in which, among other admissions, is the following:

78 "Defendant admits that prior to the 17th day of November, 1918, train No. 105 on said St. Louis-San Francisco Railroad was stopped at Mountain Grove, Missouri, on flag for passengers

destined to Memphis, Tennessee, and points south and east of said latter point, and that train No. 106 on said St. Louis-San Francisco Railroad was stopped at Mountain Grove, Missouri, on flag, for passengers destined to points north and west of Springfield, Missouri, and admits that on or about said date a change in schedule was made, as a result whereof said trains Nos. 105 and 106 do not now stop at Mountain Grove, Missouri, on flag, but denies that said change in schedule of the failure to stop said trains 105 and 106 at Mountain Grove is to the detriment of complainant or to the detriment of said city of Mountain Grove."

"Further answering, defendant states that this defendant now operates, in addition to trains Nos. 105 and 106, four passenger trains daily on said St. Louis-San Francisco Railroad, through said city of Mountain Grove, all which trains except trains Nos. 105 and 106 are scheduled and do stop at Mountain Grove. The schedule of said trains at Mountain Grove is as follows:

Southbound	#101	11:05 P. M.
	#103	10:30 A. M.
Northbound	#102	4:45 A. M.
	#104	5:45 P. M.

'Defendant further avers that the service provided by said passenger trains which now stop at Mountain Grove, Missouri, as aforesaid, is reasonable adequate to afford all necessary accommodations for the traveling public to get in and out of Mountain Grove."

"Further answering, defendant states that said trains Nos. 105 and 106 are interstate trains operating between Kansas City, Missouri and Memphis, Tennessee, as well as Birmingham, Alabama with connecting lines for the interchange of interstate passengers and express traffic, and the handling of the United States mails; that the elimination of the stops of said trains on flag at Mountain Grove, Missouri, was to enable said trains to maintain said schedule and to make necessary connections at the points aforesaid with trains on other lines of railroad; and that for this Commission to grant the relief prayed for in the complaint would directly burden
and interfere with interstate commerce, and would conflict
79 with Section 8 of Article 1 of the Constitution of the United States; Section 21 of Article II of the Constitution of Missouri, and section 30 of Article II of same Constitution, and Section 1 of Article XIV of the Amendments to the Constitution of the United States."

Upon the issues thus made a hearing was had before the Public Service Commission and the following order was made and affirmed by the circuit court of Cole County.

"Ordered 1. That defendant, the St. Louis-San Francisco Railroad, provide for the stopping of its southbound train No. 105 at Mountain Grove, Missouri, for the purpose of taking on and discharging passengers at that point."

"Ordered 2. That defendant, the St. Louis-San Francisco Railroad provide for the stopping of northbound train No. 106 at Mountain Grove, on flag or at signal, for the purpose of letting off passengers who boarded said train south of the Arkansas line, and for the purpose of taking on passengers holding tickets for points beyond Springfield, Mo."

Motion for rehearing, charging that the conclusion of the Commission on all the defenses pleaded in the answer of appellant and the assignment that the evidence was insufficient to support said finding, was filed and overruled.

Opinion.

1. Appellant complains that the Commission erred in appointing A. Z. Patterson, general counsel of the Commission, as special examiner to conduct the hearing of said cause for the reason, it is alleged, that such appointment was unauthorized and without the authority of law.

Without passing upon the propriety or strict legality of Patterson's appointment, we think it is apparent that appellant has not been injured thereby and, for this reason, the complaint ought to be overruled.

2. The question of whether or not the order of the Commission as affirmed by the Circuit Court imposes an undue burden on interstate commerce is a vital one to be determined under the facts in this case.

In the case of Chicago, Burlington and Quincy R. Co. v. Railroad Commission of Wisconsin, 237 U. S. 220 l. c. 226, it is held as follows:

"In reviewing the decision we may start with certain prin-
80 ciples as established: (1) *It is competent for a state to require adequate local facilities, even to the stoppage of interstate trains or the re-arrangement of their schedules.* (2) Such facilities existing, that is, the local conditions being adequately met, the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. (3) And this, whether the interference be directly by the legislature or by its command through the orders of an administrative body. (4) *The fact of local facilities this court may determine, such fact being necessarily involved in the determination of the Federal question whether an order concerning an interstate train does or does not directly regulate interstate commerce, by imposing an arbitrary requirement.*" (Italics ours.) To the same effect are the cases of Gladson v. Minnesota 166 U. S. 427; Lake Shore R. R. v. Ohio, 137 U. S. 285; Atlantic Coast Line v. N. C. Corp. Comm. 206 U. S. 1; Mo. Pac. Ry. v. Kansas, 216 U. S. 262; Cleveland and C. Ry. v. Illinois, 177 U. S. 514; Mississippi Ry. Comm. v. Ill. Cent. R. R. 203 U. S. 335; Atlantic Coast Line v. Wharton, 207 U. S. 328; State ex rel. Publ. Serv. Comm. 277 Mo. 175.

3. Following the doctrine of the above authorities a correct conclusion upon the facts of the instant case will lead to a proper result in its determination.

"It must be construed as a suit in equity, and we make our own finding of facts." State ex rel. M. K. & T. Ry. v. Publ. Serv. Comm., 277 Mo. l. c. 193; State ex rel. v. Publ. Serv. Comm. 271 Mo. 155; Publ. Serv. Com., Act, Laws 1913, Sec. 111.

Looking then to the evidence, as disclosed by the record, what is shown by the testimony of the sixteen witnesses and the exhibits offered?

We have carefully read and reread the evidence offered by both sides to the controversy, and we have reached the conclusion that it justifies the order made.

Without setting out the testimony in full, it is sufficient to say that it shows Mountain Grove to be a city of 2,500 inhabitants; that two State institutions, the Fruit Experiment Station and the Poultry Station, both of which are maintained by the state at an
81 expenditure of $200,000, every two years, are located there; that these institutions are visited yearly by 700 people from this and surrounding states and the inconvenience in getting in and out is very great; that local trains 101 and 103 out of Springfield to Mountain Grove are invariably crowded as far as Seymore, a short distance north of Mountain Grove, and many men, women and children are compelled to stand on account of being unable to get seats until that point is passed, the testimony shows that if additional coaches were put on these trains the congestion would be relieved, but that has not been done. It shows that Mountain Grove is a sort of gateway for a scope of territory extending about 35 miles north and northeast and the same distance south and southwest; people come there to board trains, to get freight and to ship out stuff for other points. Interstate trains 105 and 106, prior to November the 17th 1918, did stop at Mountain Grove, on flag, for passengers to or from Springfield on the west and for passengers to or from certain points south; that during that period the service was good in that it furnished the people who desired to get out and those who desired to come in a reasonably convenient way of doing so, but since the discontinuance of these trains much hardship has resulted. It shows that while said trains were operated on flag at Mountain Grove from 1 to 8 passengers daily got off of No. 5. The proof shows that the shipments and products of Mountain Grove per annum are creamery products, butter and soda water, $900,000; chickens and eggs, $300,000; lumber, $100,000; cattle hogs and mules, $100,000., grain and hay, $100,000.; that it has three banks whose capital aggregate more than $800,000., and a number of wholesale houses which aid in supplying the necessities of country stores and the territory above mentioned. It shows that said trains 105 and 106 in taking the mail at Mountain Grove slow down to a speed almost amounting to a stop and so that a person could if allowed get on and off. Appellant's Assistant Superintendent testified that it would require five minutes to stop and get the train going again to which would be added whatever time the train

stood at the station, he stated also that if everything was favorable and nothing unusual took place the five minutes could be regained between Mountain Grove and Memphis. The General Superintendent of appellant testified that it was his understanding—he didn't know whether he was correct, but ultimately said he was—
82 that prior to the 17th day of November, 1918 the Rock Island, one of the Kansas City connections, moved up its time of leaving fifteen minutes, arbitrarily, but he would not say that, if the train missed its connection with the Rock Island, it was caused by reason of having to stop at Mountain Grove. When asked why he called said trains through trains when they stopped at Paola, Fort Scott and LyCygne, he answered: "We don't make any stops on those trains that we feel we don't have to or are justified." He further stated that through passenger traffic and local passenger traffic is based upon what the railroad would consider they would be justified in doing."

As stated above we think the foregoing facts are ample to justify the orders made.

3. In our opinion the constitutional questions raised are not applicable under the facts and it is, therefore, unnecessary to pay further attention to them.

4. It is contended by the appellant that the proceedings should have been dismissed as to the railroad company.

The proceedings had in the case were against both the railroad company and Walker D. Hines, Director General thereof, who, at the time was operating said railroad in pursuance of an Act of Congress of March 21, 1918. Section 10 of said Act, provides as follows:

"That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under state or Federal Laws or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government * * *." Muir v. L. & N. R. Co. 247 Fed. l. c. 896.

This section clearly authorizes the bringing of suits against the carrier, either at law or in equity and the rendition, of judgments therein and prohibits the carrier from making the defense thereto that it is and instrumentality or agency of the Federal Gov-
83 ernment, and it is manifest that the exceptions mentioned therein have no application here.

The order is a continuing one until lawfully changed and, in my judgment, would apply to the railroad company. In the case of Publ. Serv. Com. v. St. Louis I. M. & S. Ry. and B. F. Bush its re-

ceiver, and St. Louis-San Francisco R. R. Co., and James W. Lus
et al., its receivers, 218 S. W. R. (Mo.) 310, an order went again
each company and its receivers. The appellants were the successo
in each instance of the receivers, and it was held that both compani
were bound by the order of the commission.

This court will take judicial notice that the war-time Federal co
trol of railroads terminated in first part of the year 1920, and th
roads which had, in fact during the entire time, been operated b
the corporation for the Director General, were turned back to th
corporation.

It would be an intolerable situation if because the St. Louis-Sa
Francisco Railroad was being temporarily operated by the Direct
General no judgment could be rendered against it and when th
Government operation terminated the corporation would not b
bound by the order made. We do not think such situation is just
fied, under the facts of this case, and under the law, and we, ther
fore, overrule the contention.

The judgment of the court below sustaining the order of the Co
mission should be affirmed. It is so ordered.

N. A. MOZLEY,
Commissioner.

Railey C., concurs.
White C., concurs.

Per Curiam:

The foregoing opinion of Mozley C. is hereby adopted as the opi
ion of the court. All concur, Williams, P. J., in the result.

84 And thereafter, and on the 24th day of December, 192
the said appellants filed in said cause their motion for a r
hearing and suggestions in support thereof, which said motion an
suggestions are in the words and figures following, to-wit:

In the Supreme Court of Missouri, Division No. 2, October Term, 1920.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appellants' Motion for Rehearing and Suggestions in Support Thereof.

Motion for Rehearing.

Come now appellants in the above-entitled cause and respectfully move the Court to grant them a rehearing in this cause, for the following reasons:

85 1.

Because the Court has overlooked a question decisive of this case, which question was duly submitted in this Court by appellants, to wit, that the order of respondent under review in requiring appellants to stop their interstate train No. 106 at Mountain Grove, Missouri, to let off passengers who board said train at points south of the Arkansas state line, constitutes an unlawful regulation by respondent of, and a direct burden upon, interstate commerce. Said order of respondent in this respect is an unwarranted and unlawful attempt on the part of respondent to regulate passenger traffic coming into the State of Missouri from points without said State, and hence is void because it violates the provisions of Section 8 of Article I of the Constitution of the United States, which vests in Congress the exclusive power to regulate commerce among the several states. Appellants' contention that the order of respondent in this respect is void is amply supported by the decisions of the Supreme Court of the United States in the following cases:

County of Mobile v. Kimball, 102 U. S. 691, 697, 702;
Hall v. De Cuir, 95 U. S. 485, 488, 489;
Wabash, Etc. R. Co. v. Illinois, 118 U. S. 557, 570-572;
Bowman v. Railway, 125 U. S. 465, 484, 485;
In re Rahrer, 140 U. S. 545, 555;
South Covington, Etc. R. Co. v. Covington, 235 U. S. 537, 547, 548.

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II.

Because the order of respondent in requiring appellants to stop their interstate passenger trains Nos. 105 and 106 at Mountain Grove, Missouri, constitutes a direct burden upon and interference with interstate commerce, and is therefore void because in conflict with the provisions of Section 8 of Article I of the Constitution of the United States, as shown by the decisions of the Supreme Court of the United States cited in appellants' original brief on file in this case. The opinion and decision of this Court in affirming the judgment of the lower court sustaining said order of respondent are in conflict with said decisions of the Supreme Court of the United States.

III.

Because the opinion and decision of this Court in affirming the judgment of the lower court which sustained the order of respondent as to both the Director General of Railroads and St. Louis-San Francisco Railway Company, are erroneous. The proceeding before respondent were had and the case was tried below on the theory, and the record conclusively shows, that at the time of the filing of the complaint, at the time of the hearing before respondent, and at the time of the making by respondent of the order under review, the railroad of appellant, St. Louis-San Francisco Railway Company, was being controlled, managed and operated solely by appellant, the Director General of Railroads, by authority of a proclamation of the President of the United States and under the provisions of the Act of Congress of March 21, 1918, known

87 as the "Federal Control Act," and that said St. Louis-San Francisco Railway Company had been completely ousted from the operation, management and control of said railroad. No valid order in respect of the operation of trains on said railroad could therefore be made against said St. Louis-San Francisco Railway Company, and no valid judgment based on such order could be rendered against said Company. The opinion and decision of this Court in affirming the judgment of the court below sustaining the order of respondent as to the St. Louis-San Francisco Railway Company are in conflict with the controling decisions of the Federal Courts construing said Federal Control Act in the following cases, which through inadvertence of counsel were not called to the Court's attention in appellants' original brief.

Northern Pacific R. Co. v. North Dakota, 250 U. S. 135, 148;
Rutherford v. Railroad, 254 Fed. 880, 881;
Dahn v. McAdoo, 256 Fed. 549;
Haubert v. Railroad, 259 Fed. 361;
Nash v. Southern Pacific Co., 260 Fed. 280, 284, 286.

Respectfully submitted,

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Appellants.

88 In the Supreme Court of Missouri, Division No. 2, October Term, 1920.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Suggestions in Support of Motion for Rehearing.

I.

In appellants' original brief, and also in oral argument be-
89 fore this Court, counsel for appellants urged the invalidity of the order of respondent under review, in this case, in so far as it undertakes to require appellants to stop their northbound interstate train No. 106 at Mountain Grove, Missouri, to let off passengers who board said train at points south of the Arkansas state line. The Court has overlooked one of the main questions decisive of this case, which was duly submitted by appellants, as above stated, and that is that the order of respondent in requiring appellants to stop said interstate train No. 106 at Mountain Grove to let off passengers who board said train at points south of the Arkansas state line does constitute an unlawful, unwarranted and invalid attempt on the part of respondent to regulate commerce among the several states, and a direct burden upon such interstate commerce, contrary to the commerce clause of the Federal Constitution which vests Congress with the exclusive power to regulate such commerce.

" 'Commerce, undoubtedly, is traffic,' said Chief Justice Marshall, 'but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.' "

In re Rahrer, 140 U. S., l. c. 556.

In the case of County of Mobile v. Kimball, 102 U. S., l. c. 702, the United States Supreme Court said:

"Commerce with foreign countries and among the States strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.

For the regulation of commerce as thus defined there can
90 be only one system of rules applicable alike to the whole country; and the authority which can act for the whole

country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible.".

In the Kimball case just cited, the Court drew the distinction between regulation of commerce as therein defined and the regulation of the local aids or instruments used in such commerce, and said that "language affirming the exclusiveness of the grant to Congress of power over commerce as thus defined may not be inaccurate, when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce."

And in the same case, on page 697, the Court said:

"The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declara-
91 tion of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens, and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conflicting and discriminating State legislation."

Bearing in mind the distinction between the power to regulate commerce among the several states and the power to regulate the local aids or instrumentalities used in such commerce, it is apparent that the order of respondent in its phase now under attack cannot be upheld. The order in this respect does not operate upon the instrumentality used in interstate commerce, that is, said train No. 106, after coming within the State of Missouri, in respect of furnishing additional local facilities at the station of Mountain Grove, but operates directly upon passenger traffic brought from points without the State of Missouri to a point within this State. If it should be true that respondent may have authority to require an interstate passenger train to stop at a given point in the State of Missouri, for the purpose of affording such point additional local facilities, if the local facilities afforded by the railroad are inadequate to meet local conditions and if the railroad does not otherwise furnish ade-

quate facilities for such local conditions, yet this is the ultimate extent to which the power and authority of respondent goes
92 in respect of requiring an interstate train to stop at any given point in the State of Missouri. Certainly respondent has no power or authority to require an interstate passenger train to stop at any point in the State of Missouri to let off passengers coming from points in other states, for, as we have shown, this is interstate commerce or commerce among the several states, the power to regulate which is vested exclusively in Congress. If respondent has power and authority to require an interstate passenger train to stop at a point in Missouri to let off passengers who board said train at points south of the Arkansas state line, as the order under review reads, then, by the same token, a like commission in the state of Arkansas or any other state through which such train is operated would have like power to require said train to stop at any point within the particular state for the purpose of taking on passengers destined to points in Missouri. Nay, more, a like commission in any such given state would have power to make an order prohibiting the stopping of said train at any point in such state to take on passengers destined to points in Missouri. Thus interstate commerce, or commercial intercourse among the several states, would be subjected to conflicting rules and regulations, and the result would be that such interstate commerce could not flourish, but, on the other hand, would be absolutely destroyed. The so-called commerce clause of the Federal Constitution was adopted to meet just such a situation, and by that clause Congress was vested with the exclusive power of determining what regulations should be made to govern such commerce. It is immaterial that Congress may not have enacted
93 legislation touching the regulation of passenger traffic among the several states; Congress has the sole and exclusive power to regulate such commerce, and its inaction is, as repeatedly said by the Supreme Court of the United States, "equivalent to a declaration that interstate commerce shall remain free and untrammeled" by state legislation.

In the case of South Covington, Etc., R. Co. v. Covington, 235 U. S., l. c. 548, the Court said:

"We need not stop to consider whether Congress has undertaken to regulate such interstate transportation as this, for it is clearly within its power to do so, and absence of Federal regulation does not give the power to the State to make rules which so necessarily control the conduct of interstate commerce as do those just considered."

We have found no decision so completely applicable to this question, or so conclusively showing the invalidity of the attempted regulation by respondent of passenger traffic coming from points in other states to a point in Missouri, as the language used by the Supreme Court of the United States in the case of Hall v. DeCuir, 95 U. S. 485. On pages 488 and 489 the Court said:

"The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and often-

times it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the
91 line must in all cases be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the Constitution was adopted. * * * If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side
95 of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. * * * Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by State lines, has been invested with the exclusive legislative power of determining what such regulations shall be."

The doctrine of the exclusive power of Congress to regulate commerce among the several states as announced in the Hall-De Cuir case was later approved by the Supreme Court in the case of South Covington, etc., R. Co. v. City of Covington, 235 U. S. 537, where the Court again drew the distinction between State regulations of the instrumentalities of interstate commerce which are valid under the police power of the State because involving questions of the health or safety of passengers, and regulations which, like the order of respondent in the case at bar, attempt to regulate interstate commerce itself and hence are void because directly affecting and burdening such commerce.

Appellants respectfully but earnestly urge that that part of the

order of respondent under review requiring the stopping of said interstate train No. 106 at Mountain Grove, Missouri, to let off passengers who board said train at points south of the Arkansas state line is repugnant to the commerce clause of the Federal Constitution and hence is void, and that this Court should so declare.

96 II.

The order of respondent in requiring appellants to stop their interstate passenger trains Nos. 105 and 106 at Mountain Grove, Missouri, constitutes a direct burden upon and interference with interstate commerce, and said order is therefore void because it is in conflict with the provisions of Section 8 of Article I of the Constitution of the United States. The invalidity of said order in requiring said trains to be stopped at Mountain Grove as being an unlawful regulation of, and direct burden upon, interstate commerce is conclusively shown by the decisions of the United States Supreme Court cited under Point IV of appellants' original brief filed in this case. The opinion and decision of this Court in affirming the judgment of the lower court sustaining said order requiring said interstate trains to be stopped at Mountain Grove are in conflict with said control-ing decisions of the United States Supreme Court.

III.

On page 7 of the opinion, the Court, after quoting a part of the provisions of Section 10 of the Act of Congress of March 21, 1918, known as "Federal Control Act," says:

"This section clearly authorizes the bringing of suits against the carrier, either at law or in equity, and the rendition of judgments therein, and prohibits the carrier from making the defense thereto that it is an instrumentality or agency of the Federal Government."

97 The order under review in this case was made against both the Director General of Railroads and St. Louis-San Francisco Railway Company. The Court will take judicial notice of the fact that the President of the United States took charge and control of the railroad of St. Louis-San Francisco Railway Company, among others, under proclamation dated December 26, 1917, and that such control began at 12 o'clock noon on December 28, 1917, and ended at 12:01 a. m. March 1, 1920. The proceedings before respondent which resulted in the order sustained by the court below by its judgment, which has been affirmed by this Court, were had on the theory, and the record conclusively shows, that at the time of the filing of the complaint, at the time of the hearing before respondent, and at the time of the making of the order by respondent, said railroad and the trains affected by the order were being controlled, managed and operated exclusively by the Director General of Railroads appointed by the President of the United States in his said proclamation of December 26, 1917, and that said St. Louis-San Francisco Railway Company had nothing to do with the control, management

or operation of said railroad or said trains, having been completely ousted from such control, management and operation by the act of the President of the United States in taking over and assuming control of said railroad. The management, control and operation of said railroad was not a divided one between the Federal Government and the corporate owners, but was complete, entire and exclusive in the Federal Government.

In speaking of the nature of the possession and control assumed by the Federal Government through the President in taking
98 possession of the railroads under said proclamation, the Supreme Court of the United States in the case of Northern Pacific R. Co. v. North Dakota, 250 U. S., l. c. 148, says:

"No elaboration could make clearer than do the Act of Congress of 1916, the proclamation of the President exerting the powers given, and the Act of 1918 dealing with the situation created by the exercise of such authority, that no divided but a complete possession and control were given the United States for all purposes as to the railroads in question. But if it be conceded that despite the absolute clarity of the provisions concerning the control given the United States, and the all-embracing scope of that control, there is room for some doubt, the consideration of the general context completely dispels hesitancy. How can any other conclusion be reached if consideration be given the comprehensive provisions concerning the administration by the United States of the property which it was authorized to take, the financial obligations under which it came and all the other duties and exactions which the act imposed, contemplating one control, one administration, one power for the accomplishment of the one purpose, the complete possession by governmental authority to replace for the period provided the private ownership theretofore existing?"

The order of respondent in this case contemplates and is based on a situation existing during the period of federal control of railroads. It has been held that the word "carriers" as used in Section 10 of the Federal Control Act, quoted in part in the Court's
99 opinion in the instant case, means the Director General of Railroads appointed by the President of the United States and not the corporate owners.

In Rutherford v. Union Pacific R. Co., 254 Fed. 880, 881, it is said:

"The question involved is the proper meaning of the word 'carriers' as used in this statute. Before the enactment of this statute the President by his proclamation of December 26, 1917, had taken possession and control of the railroads of the United States, acting under the authority granted to him by the Act of Congress approved August 29, 1916. The proclamation had directed that this possession, control and operation should continue to be exercised by William G. McAdoo, as Director General of Railroads. * * * From and after the taking of possession of the railroads by the President, the corporation or persons who had previously control-ed them ceased

heir functions and obligations as carriers. While goods and passengers continued to be carried, the carriage was conducted by the Director General. The acts of the former officers and employes, who retained their positions and conducted the details of operation, were he acts of the Director General. The part of Section 10 of the Act of March 21, 1918, on which the plaintiff relies did not provide that actions at law might be brought by and against the railway corporations, but did provide that they might be brought against 'such carriers,' and this referred to the 'carriers while under federal control' mentioned in the first part of the section. It would have been an anomaly to have given the actual control of the railroads to the Director General, and to have provided that suits arising out
100 of his acts should be brought against the corporations who had been divested of authority over those acts. Moreover, the language which immediately follows that portion of the statute relied on by plaintiff demonstrates that the 'carrier' who is subject to suit s the agent of the President who is operating the railroads. The anguage is: 'And in any action at law or suit in equity against the carrier no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the federal government.' The corporations or persons who had lost control and possession of the railroads would have no occasion to assert the defense that they were instrumentalities or agents of the government as to acts which occurred after their control had terminated."

In Haubert v. Baltimore & O. R. Co., 259 Fed., l. c. 362–364, in construing the Federal Control Act the Court said:

"No liability exists against the railroad company itself for a personal injury due to operation under federal control, and no judgment can be rendered therefor which will become a lien upon the corpus of its property or payment compelled therefrom. If this were done, the result would be that one person's property would be taken without his consent and without compensation to pay the debt of another * * * Section 10, it is true, subjects carriers while under federal control to all loss and liabilities as common carriers, whether arising under state or federal law or common law, except so far as may be inconsistent with the provisions of that act or any other act
applicable to such federal control, or with any order of the
101 President. The second sentence of this section permits actions at law or suits in equity to be brought and judgments rendered as is now provided by law. The first sentence relates to liabilities, and the second to the manner in which they may be enforced. If the words 'common carriers' mean the railway companies themselves, as distinguished from the agency provided by the act for operating the railway lines, it is none the less true that they are made subject only to such liabilities as are not inconsistent with the provisions of the act itself. It may be consistent to subject the railway companies to liabilities created by themselves or existing before being ousted from the possession and control of the property; it would be inconsistent with all the provisions of the act to subject them to

liabilities for the acts and conduct of public agents operating their property under federal control. It follows that the provisions of this section do not impose a liability upon the railway companies for acts of the Director General of Railroads and his agents, because so to do would be inconsistent with the provisions of this Act * * * Liabilities due to operation by the agencies having possession by virtue of the acts creating and authorizing federal control are not liabilities of the railroad companies that have been ousted from such possession and control, and suits cannot be brought against such companies and prosecuted to judgment against them."

In Nash v. Southern Pacific Co., 260 Fed., l. c. 284, in speaking of the same section 10 of the Federal Control Act, the Court said:

"As the terms of the Act at once disclose, it was the purpose
102 and intent of Congress that the possession and control of the systems of transportation taken over in whole or in part by the President was to be an exclusive one, to no extent shared in by the owners. If the latter or their officers were retained as operators, they were to act merely as servants and under pay of the government; and while the owners were to be compensated for the use of their property, everything earned or accruing from their operation in excess of such compensation was to be the property of the government. Such a taking involved in no sense the element of agency by the government for the owners. Agency implies a consentual or contractual relation, but this was not such. It was more nearly analogous or akin to a taking by the sovereign in the right of eminent domain; and the result of such a taking was necessarily to relieve the owners of systems so taken from any legal responsibility to the public arising out of their operation, and quite as necessarily an assumption of such responsibility by the government. And this, as is clearly shown by the whole framework of the Act, was what Congress desired to accomplish."

And again, on pages 286 and 287, the Court said:

"What was authorized by this legislation to be taken under federal control was specific property—that is, solely the transportation systems of the country—and that was all the proclamations of the President assumed to take into his control. The corporations owning these properties were not taken; they were left untouched and free to continue their functions as such in all respects other than in the operation of their carrier systems. * * * That it was in-
tended as the purpose of section 10 * * * to authorize
103 suits against the owners of these properties in causes of action arising out of transactions had with the Federal Railroad Administration, or through torts committed by its agents while under its control—things for which, we repeat, the owners could be in no way responsible—may not for a moment be indulged; such a construction would clearly render the provision obnoxious to the objection of authorizing the taking of property without due process of law, a purpose which may not be imputed to Congress."

Following the decisions of the Federal Courts in construing the Federal Control Act, and the enforcement of liabilities arising out of Federal control of railroads, it has been held by the Springfield Court of Appeals that, in an action against a railroad company and the Director General of Railroads on a cause of action arising out of the operation of the railroad by the Director General, it was error to render a judgment against the railroad company.

Cravens v. Hines et al., 218 S. W. 912.

Since at the time the proceedings out of which the order under review were had before respondent, and at the time of the making of such order by respondent, appellant, St. Louis-San Francisco Railway Company, had nothing to do with the management, control or operation of its railroad or the two trains involved in the order, but said railroad and trains were controlled, managed and operated exclusively by the Director General of Railroads, the order should not have gone against the railway company, and the lower court erred in rendering a judgment sustaining said order as to
101 the railway company. We respectfully submit that the opinion and decision of this Court in holding that the judgment sustaining the order as to the railway company should be affirmed are wrong, and that said judgment should be reversed as to the railway company.

Respectfully submitted,

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Appellants.

105 And on the same day, to-wit, the 24th day of December, 1920, the said appellants filed their motion to transfer the said cause to the Court en Banc, which said motion is in the words and figures following, to-wit:

In the Supreme Court of Missouri, Division No. 2, October Term, 1920.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appellants' Motion to Transfer to Court in Banc.

Come now appellants in the above entitled cause and respectfully move the Court to transfer this cause to the Court in Banc for its decision pursuant to the provisions of Section 4 of the Amendment

of 1890 to Article VI of the Constitution of Missouri, which pro
vides:

"When the judges of a division are equally divided in opinion i
a cause, or when a judge of a division dissents from the opinio
therein, or when a federal question is involved, the cause, on the ap
plication of the losing party, shall be transferred to the Court for i
decision."

In support of this motion to transfer said cause to the Court i
banc for its decision, appellants respectfully show to the Court tha
a federal question is involved in this cause, to-wit: Whether the orde
of respondent, the Public Service Commission of the State of Missour
requiring appellants to stop their interstate passenger train No. 10
at Mountain Grove, Missouri, for the purpose of taking on and di
charging passengers at that point, and to stop their interstate passe
ger train No. 106 at Mountain Grove, Missouri, for the purpose o
letting off passengers who board said train at points south o
106 the Arkansas state line, and for the purpose of taking o
passengers holding tickets for points beyond Springfield, Mi
souri, which order was sustained by the judgment of the Circuit Cou
of Cole County, Missouri, which judgment has been affirmed by th
judgment and decision of Division No. 2 of this Court, is in conflic
with and violates the provisions of Section 8 of Article I of the Co
stitution of the United States, vesting Congress with the power to reg
late commerce among the several states. Appellants further show t
the Court that said federal question was duly raised by appellan
in the proceedings had before respondent, was relied on and urge
by appellants in the court below and in this Court, and has been d
cided by Division No. 2 of this Court adversely to appellants.

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Appellants.

Service of copy of the above motion to transfer to Court in ban
is hereby acknowledged this 24th day of December, 1920.

R. P. SPENCER &
JAMES D. LINDSAY,
Attorneys for Respondent.

107 And thereafter, on the 30th day of December, 1920, th
following further proceedings were had and entered of reco
in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 2, October Term, 1920.

(No. 21862.)

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Now at this day, the Court having considered and fully understood the motion of said appellants for a rehearing herein, doth order that said motion be, and the same is overruled; and it is further considered and ordered by the Court, on motion of the said appellants, that said cause be, and the same is transferred to the Court en Banc.

And thereafter, and on the 7th day of May, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, April Term, 1921.

(No. 21862.)

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Come now the said parties, by attorneys, and after argument herein, submit this cause to the Court, with leave of five days to the respondent to file reply brief herein. (David E. Blair, J., not sitting.)

108 And thereafter, and on the 8th day of June, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, April Term, 1921.

(No. 21862.)

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Now at this day, the parties agreeing thereto, it is ordered by the Court that Hon. Thomas J. Seehorn be, and he is hereby, appointed special judge to sit in the hearing of this cause and give decision in the same manner with the same effect as one of the Judges.

And thereafter, and on the 8th day of November, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, October Term, 1921.

(No. 21862.)

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Come now the said parties, by attorneys, and after argument herein submit this cause to the court. Hon. Thomas J. Seehorn sitting with the court as special judge.)

109 And thereafter, and on the 30th day of November, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, October Term, 1921.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appeal from the Circuit Court of Cole County.

Now at this day come again the parties aforesaid, by their respective atorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Cole County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants its costs and charges herein expended and have therefor execution. (Opinion filed.)

And on the same day, to-wit, the 30th day of November, 1921, the Court adopted, as its opinion herein, the opinion of Division Number Two in said cause, by its per curiam in the following words, to-wit:

Per Curiam:

The foregoing opinion of Mozley, C., is hereby adopted as the opinion of the Court. Seehorn, Special Judge, James T. Blair, C. J., and Graves and Walker, JJ., concur; Woodson, Higbee and Elder, JJ., dissent. (See page 76 of transcript for said opinion.)

110 And thereafter, and on the 26th day of January, 1922, James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," filed in this cause his motion for substitution of party appellant, which said motion is in the words and figures following, to-wit:

In the Supreme Court of the State of Missouri, October Term, 1921.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Motion for Substitution of Party Appellant.

Comes now James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," and respectfully suggests to the Court that Walker D. Hines, Director General of Railroads, appellant herein, has heretofore resigned as such Director General of Railroads, and that James C. Davis has heretofore been appointed and is now the duly qualified and acting Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," and is entitled to be substituted as party appellant herein in lieu of said Walker D. Hines, Director General of Railroads.

Wherefore, said James C. Davis, Director General of Railroads and designated Agent of the President, as aforesaid, prays that he be substituted as party appellant herein in lieu of said Walker
111 D. Hines, Director General of Railroads.

JAMES C. DAVIS,
Director General of Railroads and Agent of the President, Designated under the Provisions of Section 206 of the "Transportation Act, 1920,"
By W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
His Attorneys.

Dated Janv. 26, 1922.

Public Service Commission of the State of Missouri hereby consents to the substitution of James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," as party appellant, in lieu of Walker D. Hines, Director General of Railroads, in

the above entitled cause, as prayed for in the foregoing application for such substitution.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
By RICHARD PERRY SPENCER,
General Counsel.
JAMES D. LINDSAY,
Assistant Counsel.

Dated Jany. 26th, 1922.

112 And thereafter, and on the 1st day of February, 1922, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of the State of Missouri, October Term, 1921.

No. 21862.

STATE OF MISSOURI ex Rel. ST. LOUIS-SAN FRANCISCO RAILWAY Company and Walker D. Hines, Director General of Railroads, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Order Substituting Party Appellant.

The application of James C. Davis, Director General of railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," to be substituted as party appellant in the above entitled cause in lieu of the above named appellant, Walker D. Hines, Director general of Railroads, to which substitution respondent has duly consented, is hereby granted, and said James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," is hereby substituted as party appellant in this cause in lieu of appellant Walker D. Hines, Director General of Railroads.

113 The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads and Agent of the President Designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

Petition for Writ of Error.

The petition of St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," respectfully shows:

That said St. Louis-San Francisco Railway Company is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri.

That James C. Davis is now the duly appointed, qualified and acting Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the Act of Congress known as the "Transportation Act, 1920."

That in a certain cause pending in said Supreme Court of the State of Missouri wherein the State of Missouri, at the relation of St. Louis-San Francisco Railway Company and Walker D. Hines, Director General of Railroads, were appellants, and Public Service Commission of the State of Missouri was respondent, said Supreme Court of the State of Missouri did, on November 30, 1921, make and enter of record in said cause a final judgment in favor of said respondent and against said appellants, by which it was ordered

114 and adjudged that a certain order of respondent, requiring said appellants, and each of them, to stop a certain southbound interstate passenger train No. 105, operated on the line of railroad of said St. Louis-San Francisco Railway Company, at the City of Mountain Grove, Missouri, for the purpose of taking on and discharging passengers at said point, and to stop a certain northbound interstate passenger train No. 106, operated on the line of railroad of said St. Louis-San Francisco Railway Company, at said City of Mountain Grove, Missouri, on flag or signal, for the purpose of letting off passengers who board said train at points south of the Arkansas State line, and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri, did not impose unnecessary or undue burdens on interstate commerce or violate Section 8 of Article I of the Constitution of the United States, and that said order of respondent was not unjust, unreasonable, oppressive or illegal, said Supreme Court of the State of Missouri by its said final judgment thereby ordering and adjudging that said order of respondent was a just, reasonable, lawful and legal order.

That said judgment of the Supreme Court of the State of Missouri was and is a final judgment in the highest court of the State of Missouri in which a decision could or can be had.

That said Walker D. Hines, Director General of Railroads, has heretofore resigned as such Director General of Railroads, and your petitioner, James C. Davis, has heretofore been appointed and is now the duly qualified and acting Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," and has been duly substituted in lieu of said Walker D. Hines, Director General of Railroads, as party appellant in said Supreme Court of the State of Missouri in the cause aforesaid by order duly made and entered of record therein.

15 That the adjudication by said Supreme Court of the State of Missouri by its final judgment, as aforesaid, that said order of respondent is not in violation of the provisions of Section 8 of Article I of the Constitution of the United States, giving to Congress the exclusive right to regulate commerce among the several states, fully appears in the record, opinion and final judgment of said Court, and that by said final judgment manifest error was committed to the great damage of your petitioners.

Wherefore, your petitioners respectfully pray that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Missouri commanding said Court to certify and send to said Supreme Court of the United States a full and complete transcript of the record and proceedings of said Supreme Court of the State of Missouri in the cause aforesaid; that citation be granted and signed; that the bond herewith presented be approved; that the errors committed by said Supreme Court of the State of Missouri may be reviewed, and that said judgment of said Supreme Court of the State of Missouri in the cause aforesaid and every part thereof may be reversed; and your petitioners will ever pray.

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Plaintiffs in Error.

151½ [Endorsed:] The Supreme Court of the State of Missouri. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State of Missouri, Defendant in Error. Petition for Writ of Error. Writ granted. Filed Feb. 1, 1922. J. D. Allen, Clerk Supreme Court.

116 The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads and Agent of the President Designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error.

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

Assignment of Errors.

Now come St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," Plaintiffs in Error in the above entitled cause, and say that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Missouri in the above entitled matter there is manifest error in this, to-wit:

First. Said Court erred in its decision and judgment in upholding as legal and valid the order of the Public Service Commission of Missouri, Defendant in Error in this cause, and in holding and adjudging that said order did not, and does not, constitute a regulation of, interference with, or burden upon interstate commerce, contrary to the provisions of the third clause of Section 8 of Article I of the Constitution of the United States.

Second. Said Court erred in its decision and judgment in rendering judgment in favor of Defendant in Error and against the contention that said order of the Public Service Commission of Missouri was illegal and void as constituting a regulation of, in-
117 terference with, or burden upon interstate commerce, contrary to the provisions of the third clause of Section 8 of Article I of the Constitution of the United States.

Third. Said Court erred in refusing to adjudge that said order of the Public Service Commission of Missouri was illegal, oppressive, arbitrary and void.

Fourth. Said Court erred in its decision and judgment in holding and adjudging that said order of the Public Service Commission of Missouri was a valid, legal and binding order as against St. Louis-San Francisco Railway Company, Plaintiff in Error, which at the time said order was entered was not in possession or control of, or operating its lines of railroad.

Wherefore, said Plaintiffs in Error ask by reason of each and every one of the foregoing assignments of error that the judgment and decision of the Supreme Court of the State of Missouri herein

be reversed and for naught held, and that Plaintiffs in Error may have and recover all costs herein expended.

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Plaintiffs in Error.

117½ [Endorsed:] The Supreme Court of the State of Missouri. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State of Missouri, Defendant in Error. Assignment of Errors. Filed Feb. 1, 1922. J. D. Allen, Clerk Supreme Court.

118 Copy.

The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads and Agent of the President Designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

STATE OF MISSOURI,
City of St. Louis, ss:

Bond.

Know all men by these presents, that we, St. Louis-San Francisco Railway Company, a corporation, and James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," as Principals, and United States Fidelity & Guaranty Company, a corporation, as Surety, are held and firmly bound unto Public Service Commission of the State of Missouri in the sum of Two Thousand Dollars, to the payment of which, well and truly to be made to said Public Service Commission, and its successors, we jointly and severally bind ourselves, our respective successors, heirs, executors and administrators, firmly by these presents.

Sealed with our seals this 24th day of January, 1922.

Whereas, the above-named Plaintiffs in Error have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered by the Supreme Court of the State of Missouri in the above entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named Plaintiffs in Error shall prosecute their said writ
119 of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and effect.

[SEAL.] ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
By T. A. HAMILTON,
Vice-President.

Attest:

F. H. HAMILTON,
Secretary.

JAMES C. DAVIS,
Director General of Railroads and Agent of the President Designated under the Provisions of Section 206 of the "Transportation Act, 1920."
By W. F. EVANS,
His Attorney.

[SEAL.] UNITED STATES FIDELITY & GUARANTY COMPANY,
(Sgd.) By J. E. AUCHLY,
Its Attorney in Fact.

Approved:

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

119½ [Endorsed:] The Supreme Court of the State of Missouri. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State Missouri, Defendant in Error. Bond. Filed Feb. 1, 1922. J. D. Allen, Clerk Supreme Court.

120 The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads and Agent of the President Designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

Order Allowing Writ of Error.

The above entitled matter coming on to be heard upon the petition of the Plaintiffs in Error for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, and upon examination of said petition and the record in said matter, and desiring to give petitioners an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that the bond presented by said petitioners be, and the same is hereby, approved, this 1 day of February, 1922.

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

120½ [Endorsed:] The Supreme Court of the State of Missouri. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State of Missouri, Defendant in Error. Order Allowing Writ of Error. Filed Feb. 1, 1922. J. D. Allen, Clerk Supreme Court.

121 The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads and Agent of the President Designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said Supreme Court of the State

of Missouri, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in that certain suit between State of Missouri, at the relation of St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," as substituted appellant in lieu of Walker D. Hines, Director General of Railroads, as appellants, and Public Service Commission of the State of Missouri, as respondent, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such, their validity, a manifest error hath happened, to the
122 great damage of the petitioners for this writ, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 3rd day of March, 1922, in said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the said Supreme Court, the 1st day of February, in the year of our Lord, 1922.

[Seal of the United States District Court of Missouri.]

EDWIN R. DURHAM,
Clerk of the United States District Court for the Central Division of the Western Judicial District of Missouri.
By F. J. FROMME,
D. C.

Allowed:
JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

122½ [Endorsed:] The Supreme Court of the State of Missouri. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State of Missouri, Defendant in Error. Writ of Error. Filed Feb. 1, 1922. J. D. Allen, Clerk Supreme Court.

123 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

To the Public Service Commission of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at Washington, D. C., within thirty (30) days from date hereof, pursuant to writ of error filed in the Clerk's office of the Supreme Court of the State of Missouri, wherein St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under the provisions of Section 206 of the "Transportation Act, 1920," are Plaintiffs in Error, and you are Defendant in Error, to show cause, if any there be, why the judgment rendered by you and complained of by said Plaintiffs in Error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable James T. Blair, Chief Justice of the Supreme Court of the State of Missouri, this 1 day of February, 1922.

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

Attest:

[Seal of Supreme Court of Missouri.]

J. D. ALLEN,
Clerk Supreme Court of the State of Missouri.

Due and legal service of the foregoing citation is hereby duly accepted and acknowledged this 1" day of February, 1922.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
By R. PERRY SPENCER,
General Counsel.
JAMES D. LINDSAY,
Assistant Counsel.

123½ [Endorsed:] The Supreme Court of the State of Missouri. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads and Agent of the President designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State of Missouri, Defendant in Error. Citation. Filed Feb. 1, 1922. J. D. Allen, Clerk Supreme Court.

124 The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS Director General of Railroads and Agent of the President Desig nated under Section 206 of the "Transportation Act, 1920," Plain tiffs in Error,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

Precipe for Transcript.

The Clerk will please incorporate in the transcript of record to b filed in the Supreme Court of the United States the record in thi Court consisting of a copy of the transcript from the Circuit Court o Cole County, Missouri, and the orders of this Court relating thereto the Abstract of Record filed herein, a copy of the order of submissio of said cause in Division No. 2 of this Court, a copy of the opinio rendered in Division No. 2 of this Court, a copy of the motion fo rehearing and a copy of the motion to transfer said cause to th Court en banc and of the orders of this Court relating thereto, copy of the order of submission of this cause in the Court en banc an of all orders subsequent thereto, a copy of the order adopting th opinion rendered in Division No. 2 and a copy of the judgment o this Court en banc in said cause.

W. F. EVANS,
E. T. MILLER,
A. P. STEWART,
Attorneys for Plaintiffs in Error.

Service of the within and foregoing is hereby acknowledged thi 1st day of February, 1922.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
By R. PERRY SPENCER,
General Counsel.
JAMES D. LINDSAY,
Assistant Counsel.

124½ [Endorsed:] The Supreme Court of the State of Missouri St. Louis-San Francisco Railway Company and James C Davis, Director General of Railroads and Agent of the Presiden Designated under Section 206 of the "Transportation Act, 1920," Plaintiffs in Error, v. Public Service Commission of the State o Missouri, Defendant in Error. Precipe for Transcript. Filed Feb 1, 1922. J. D. Allen, Clerk Supreme Court.

125 STATE OF MISSOURI, *set:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri in obedience to the mandate of the within writ of error, and as di

rected by the within præcipe of plaintiffs in error for transcript, herewith transmit to the Honorable Supreme Court of the United States, a full, true and complete transcript of the record and proceedings in a cause between State of Missouri, ex rel. St. Louis-San Francisco Railway Company and Walker D. Hines, Director General of Railroads, Appellants, and Public Service Commission of the State of Missouri, Respondent, No. 21862, as fully as the same appear of record and on file in my office, to which said transcript are attached, and made part thereof, the appellants' petition for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, assignment of errors, bond (copy of), order of James T. Blair, Chief Justice, allowing writ of error, writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, citation to respondent, defendant in error, and præcipe for transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Missouri, at my office in the City of Jefferson, State aforesaid, this 13th day of February, 1922.

[Seal of Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court
of the State of Missouri.

Endorsed on cover: File No. 28,739. Missouri Supreme Court. Term No. 784. St. Louis-San Francisco Railway Company and James C. Davis, Director General of Railroads, &c., plaintiffs in error, vs. Public Service Commission of the State of Missouri. Filed February 27, 1922. File No. 28,739.

FILED
JAN 29
WM. R. STA

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads, etc., Plaintiffs in Error,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

No. 284.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF OF DEFENDANT IN ERROR.

L. H. BREUER,
FRANK E. ATWOOD,
Counsel for Defendant in Error.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads, etc., Plaintiffs in Error,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

No. 284.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT

The citizenship of Mountain Grove, Missouri, through their Commercial Club, filed an application with the Missouri Public Service Commission praying for an order on Plaintiffs in Error, to stop passenger trains known as Numbers 105 and 106, at said town of Mountain Grove, on May 26, 1919;

after a full hearing upon the application, the Commission issued an order thereon requiring:

> 1. The stopping of southbound train No. 105 at Mountain Grove for the purpose of taking on and discharging passengers at that point; and,
>
> 2. The stopping of northbound train No. 106 at Mountain Grove on flag or signal for the purpose of letting off passengers who board said train at points south of the Arkansas state line, and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri.

The evidence upon which this order was based shows that Mountain Grove is a growing city located in Wright County, Missouri, on the main line of the St. Louis-San Francisco Railway Company, running from Kansas City, Missouri, to Memphis, Tennessee. Though not the county seat, it is the most populous city and the largest trading point in the county with a population of approximately twenty-five hundred. It does a large volume of business and has a trade territory extending from thirty to fifty miles north and northeast and twenty-five to forty miles south and southwest. It has all the businesses and modern conveniences usual in a town of its size and in addition, it has factories, wholesale houses, and other distributing agencies

to an extent seldom found in towns of its size. The Fruit Experiment Station and the Poultry Experiment Station, two State institutions, are located there.

At the hearing the testimony showed and the Commission found that (Ab. 29):—

> "The town of Mountain Grove, Missouri, is located in the southwestern portion of Wright County, Missouri. It has a population of approximately 2,500 persons, contains a number of banks, stores of various kinds and electric light and telephone facilities. A creamery and soda water plant doing a business of approximately $900,000 a year, a wholesale grocery doing a business of approximately $300,000 a year, persons engaged in the handling of dairy products with a volume of approximately $300,000 a year, grain milling business with a volume of approximately $200,000 a year, lumber interests doing a business of approximately $100,000 a year, shipments of live stock approximating a value of $100,000 a year, and in addition to these the State Fruit Experiment Station, and the State Poultry Experiment Station are located at this point. There is also an overall factory employing in the neighborhood of fifty girls, and with

a volume of bank business estimated at $800,000 per year.

"The trade territory is estimated at from thirty to fifty miles north and northeast, and twenty-five to forty miles south and southwest.

Visitors from all parts of the state and from various portions of the United States go to Mountain Grove for the purpose of visiting the Experiment Stations for fruit and poultry as above described."

At the time of filing the complaint and order issued thereon Plaintiffs in Error stopped but two trains each way at the town of Mountain Grove, the schedule of said trains being as follows:

Southbound	No. 101	11:05 P. M.
	No. 103	10:30 A. M.
Northbound	No. 102	4:45 A. M.
	No. 104	5:45 P. M.

The trains ordered to reinstate service at Mountain Grove were:

Southbound	No. 105	1:34 A.M.
Northbound	No. 106	2:45 A.M.

Trains Numbers 101 and 102 consisted of three cars, trains Numbers 103 and 104 consisted of six cars, all being purely local trains. Trains Numbers 105 and 106 are fast trains. All of these trains had

their origin or destination at Kansas City, Missouri, and ran to or from Memphis, Tennessee, and points east and south thereof.

For a number of years prior to November, 1918, defendant had stopped its trains Numbers 105 and 106 on flag at Mountain Grove. At that time its schedules and connections were substantially the the same as now.

C. T. Mason, Assistant Superintendent of plaintiff company and in charge of the division wherein Mountain Grove is located, gave it as his opinion (Ab. 23):

> "If Mountain Grove was made a flag or signal stop, for train No. 105, if other conditions were favorable, the five minutes that would be required to stop at Mountain Grove, might be regained."

He further testified (Ab. 25):

> "If, in addition to all these stops between Kansas City and Memphis, train No. 105 stopped at Mountain Grove as a regular stop, this fact alone would not necessarily interfere with our connection at southern points if our train was on time."

To show the necessity for stoppage of trains Numbers 105 and 106 at Mountain Grove, complainant, with other evidence, offered the following:

Mr. A. F. Collier, President of the Chamber of Commerce of Mountain Grove (Ab. 12) testified that the state expended $100,000 biennially on the poultry station and a like amount on its fruit experiment station, both of which were educational and designed to foster industry in their respective lines, and that, on account of inadequate service it was difficult for people from distant parts of the state to avail themselves of the advantages of a visit to these two stations for the reason that too much time was consumed in getting in and out of Mountain Grove; that their trade territory extended about thirty-five miles north and northeast and about the same distance south and southeast, and that those persons residing within this vast territory came there to take trains. Many leaving Mountain Grove destined for points beyond Springfield took No. 106, a fast train. A great many people, said Mr. Collier, from the territory south and southwest, came to Mountain Grove to take the No. 106 train. In the summer and fall he had seen dozens of boys take this train bound for the Kansas wheat fields.

Mr. W. S. Candler, Mayor, (Ab. 17) sets forth very clearly the activities and industries of the city and shows wherein the service is inadequate. He thought one hundred and fifty passengers each month, to and from Mountain Grove, would be served by stopping trains Numbers 105 and 106 there on flag, which were not served now.

Mr. L. W. Ellington, (Ab. 19) night watchman of the City of Mountain Grove, testified that when train No. 105 did stop at Mountain Grove, prior to November 17, 1918, five or ten passengers from beyond Springfield generally alighted from the train and frequently fifteen or twenty.

Fred Crosby, (Ab. 19) Assistant Secretary of the State Poultry Experiment Station, testified as to the inconveniences suffered by the seven hundred persons who came annually to visit the station.

There was other evidence to the same effect, all of which tended to show that the conditions there fully justified the order of the Commission, and that the two trains might be stopped as ordered, without interfering with the connections of Plaintiffs in Error at Memphis and Kansas City, or otherwise hindering transportation and commerce.

BRIEF OF THE ARGUMENT

POINTS AND AUTHORITIES

I.

The State, acting through its legislature or through a commission, may properly require an interstate commerce train to stop at certain stations when,

(a) Adequate service is not otherwise furnished; and

(b) The stop required is not a direct interference with, or an undue burden upon interstate commerce.

12 Corpus Juris, p. 13, Sec. 11:

Lake Shore & Michigan Southern Ry. vs. Ohio, 173 U. S. 285, l. c. 292.

Chicago, Burlington & Quincy Ry. vs. Drainage Commissioners, 200 U. S. 561, l. c. 592.

The Minnesota Rate Cases, 230 U. S. 352, l. c. 410.

Mississippi Railroad Commission, et al., vs. Mobile & Ohio R. Co., 244 U. S. 388, l. c. 390.

Atlantic Coast Line vs. Wharton, 207 U. S. 328, l. c. 334, 335.

Louisville & N. R. Co. vs. Hughes, et al., 207 Fed. 727, l. c. 737.

Lake Shore & Michigan Southern Ry. Co. vs. Smith, 173 U. S. 684, l. c. 688.

II.

The State is primarily the judge of the necessity of such orders and enactments.

McLain vs. Arkansas, 211 U. S. 539, l. c. 547.

Chicago, Burlington & Quincy R. Co. vs. McGuire, 219 U. S. 549, l. c. 569.

Erie Railroad Co. vs. Williams, 233 U. S. 685, l. c. 699.

III.

The order merely restored the service which Plaintiffs in Error had for a long time previously furnished, by stopping passenger trains number 105 and number 106 without which the service furnished was inadequate.

1. The service furnished was clearly inadequate on the face of the record.

(a) State and Governmental business centering in and about the place where service is required.

Gladson vs. Minnesota, 166 U. S. 427, l. c. 428, 430, 431.

Lake Shore & Michigan Southern Ry. vs. Ohio, 173 U. S. 285, l. c. 289, 298.

Gulf, Colorado & Santa Fe Ry. Co. vs. Texas, 246 U. S. 58, l. c. 61.

(b) The size of the place and the extent and demand for transportation.

Gladson vs. Minnesota, 166 U. S. 427, l. c. 430, 431.

Lake Shore & Michigan Southern Railroad vs. Ohio. 173 U. S. 285, l. c. 301, 302, 303.

Atlantic Coast Line vs. Wharton, 207 U. S. 328, l. c. 335.

Chicago, Burlington & Quincy Ry. vs. Wisconsin Railroad Commission, 237 U. S. 220, l. c. 227, 228, 229.

2. The service was inadequate in the light of adjudicated cases.

St. Louis-San Francisco R. Co. vs. Public Service Commission, 254 U. S. 335, l. c. 536.

Herndon vs. Chicago R. I. & P. R. R. Co. 218 U. S. 135, l. c. 136, 137.

Cleveland C. C. & St. L. R. Co. vs. Illinois, 177 U. S. 514.

Atlantic Coast Line vs. Wharton, 207 U. S. 328.

Mississippi R. Comm. vs. I. C. R. R. Co. 203 U. S. 335.

Gulf, Colorado & Santa Fe Ry. Co. vs. State of Texas, 246 U. S. 58.

IV.

The order is not a direct regulation of, an interference with, or an undue burden upon interstate commerce.

1. It does not regulate interstate commerce. *Lake Shore & Michigan Southern R. vs. Ohio*, 173 U. S. l. c. 300, 302.
2. It does not directly interfere with interstate commerce.
3. It is not an undue burden upon interstate commerce.

V.

The order is valid against Plaintiff in Error, St. Louis-San Francisco Railway Company.

Federal Control Act, Section 15.

ARGUMENT

I.

The State, acting through its Legislature or through a commission, may properly require an interstate commerce train to stop at certain stations when,

(a) Adequate service is not otherwise furnished; and

(b) The stop required is not a direct interference with, or an undue burden upon interstate commerce.

12 Corpus Juris, p. 13, Sec. 11:

"The States may, as long as they do not more than legitimately exercise their reserved police power, enact laws which will be valid, although they may incidentally affect interstate commerce."

Mr. Justice Harlan, in *Lake Shore & Michigan Southern Railway vs. Ohio*, 173 U. S. 285, l. c. 292, holds that the exercise of the police powers of the States, when exerted with reference to matters more or less connected with interstate commerce, extends to and embraces regulations designed merely to promote the public convenience.

Again, *Chicago, Burlington & Quincy Railway Drainage Commissioners*, 200 U. S. 561, l. c. 592.

"We hold that the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety. And the validity of a police regulation, whether established directly by the State or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose."

The Minnesota Rate Cases, 230 U. S. 352, l. c. 410:

"And the legislation of the States, safeguarding life and property and promoting comfort and convenience within its jurisdiction, may extend incidentally to the operations of the carrier in the conduct of interstate business, provided it does not subject that business to unreasonable demands and is not opposed to Federal legislation."

Mississippi Railroad Commission, et al., vs. Mobile & Ohio Railroad Company, 244 U. S. 388, l. c. 390:

"Under this power of regulation a State may require carriers to provide reasonable and adequate facilities to serve not only the local necessities but the local convenience of the communities to which they are directly tributary."

Atlantic Coast Line vs. Wharton, 207 U. S. 328, l. c. 334-335:

"When, therefore, an order made under state authority to stop an interstate train is assailed because of its repugnancy to the interstate commerce clause, the question whether such order is void as a direct regulation of such commerce may be tested by considering the nature of the order, the character of the interstate commerce train to which it applies, and its necessary and direct effect upon the operation of such train. But the effect of the order as a direct regulation of interstate commerce may also be tested by considering the adequacy of the local facilities existing at the station or stations at which the interstate commerce train has been commanded to stop. True, inherently considered, whether there be adequate local facilities is not a Federal question, but in so far as the existence of such adequate local facilities is involved in the determination of the Federal question of whether the order concerning an interstate train does or does not directly regulate interstate commerce, that question for such purpose is open and may be considered by us."

Louisville & N. R. Company vs. Hughes, et al., 207 Fed. 727, l. c. 737 (On constitutionality of act of Legislature of Ohio to promote safety of employees and travelers by additional equipment upon locomotives used in interstate commerce):

"The decisions, the principle being expressed in various ways, show that when a state law enacted in the exercise of its police power affects interstate commerce only indirectly and incidentally, is passed in good faith and is not directed against interstate commerce, is an aid to commerce, does not go beyond the necessities of the case, and does not constitute an arbitrary or unreasonable interference with commerce between the states, is appropriate to and has a real substantial relation to an object as to which the state is competent to legislate, and does not conflict with the expressed or presumed will of Congress on the subject, it is invariably sustained."

In the case at bar there is no question raised as to conflict of the order with Federal legislation, and the case arising under the commerce clause of the Federal Constitution the inquiry is whether the order in question violates that provision. *Lake Shore & Michigan Southern Railway Co. vs. Smith*, 173 U. S. 684, l. c. 688.

II.

The State is primarily the judge of the necessity of such orders and enactments.

McLean vs. Arkansas, 211 U. S. 539, l. c. 547 (Statute of Arkansas attacked as a violation of the 14th Amendment of the Constitution of the United States):

"The legislature being familiar with local conditions is, primarily the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power."

Chicago, Burlington & Quincy Railroad Co. vs. McGuire, 219 U. S. 549, l. c. 569 (Personal injury case decided by Mr. Justice Harlan involving constitutionality of a law of the State of Iowa) holds:

"The principle involved is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, the legislature transcends the limits of its power in interfering with the liberty of contract; but where there is reasonable relation to an object within the governmental authority, the exercise of the legislative discretion is not subject to judicial review."

Erie Railroad Company vs. Williams, 233 U. S. 685, l. c. 699 (Constitutionality of a New York labor law under consideration).

"Each instance of asserted conflict must be determined by itself, and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of

the public. The burden is on him who attacks the legislation and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some constitutional restraint, or that the public welfare is not subserved by the legislation. The legislature is, in the first instance, the judge of what it necessary for the public welfare, and a judicial review of its judgment is limited." See also same case, l. c. 704: "But whether the law embodies an unjust burden depends upon its validity and whether the public welfare is subserved by one system or the other, is as we have said, in the first instance, for the legislature to determine and its judgment will not be reviewed unless 'unmistakably and palpably in excess of legislative power.' "

III.

THE ORDER MERELY RESTORED THE SERVICE WHICH PLAINTIFFS IN ERROR HAD FOR A LONG TIME PREVIOUSLY FURNISHED, BY STOPPING PASSENCER TRAINS NUMBER 105 and NUMBER 106 WITHOUT WHICH THE SERVICE FURNISHED WAS INADEQUATE.

1. The service furnished was clearly inadequate on the face of the record.

The adequacy with which local conditions and needs are met by the train service furnished, with-

out the service involved in the order, must be considered from the following viewpoints:

(a) State and Governmental business centering in and about the place where service is required.

Without the stopping of passenger trains Number 105 and Number 106, the facilities were inadequate to serve the needs of two large State institutions located at Mountain Grove. State and Governmental institutions are created and maintained to serve the public welfare and convenience, and the courts hold that their requirements are to be considered, especially, where as in this case, the common carrier itself acquired its charter from the same state which created and maintains the institutions.

Gladson vs. Minnesota, 166 U. S. 427, l. c. 428, 430, 431;

Lake Shore & Michigan Southern Ry. vs. Ohio, 173 U. S. 285, l. c. 289, 298;

Gulf, Colorado & Santa Fe Ry. Co. vs. Texas, 246 U. S. 58, l. c. 61.

On this point the evidence is as follows:

A. F. Collier, Chairman of the Transportation Committee of the Mountain Grove Commercial Club, also engaged in the produce business at Mountain Grove, (P. 12, printed transcript of record filed in this court) said: That the State of Mis-

souri maintained two State institutions, namely, the Poultry Experiment Station and the Fruit Experiment Station, at an annual expense of about $100,000; that both of these institutions are educational and established by the State to foster the poultry and fruit industries; that with the present arrangement of train service at Mountain Grove it was very hard for people to take advantage of the benefits of these institutions, as they had to kill too much time getting in and out of Mountain Grove; that people coming to visit these institutions, if they got into Springfield on any train that came in after eight o'clock, would have to stay in Springfield until the next morning, leaving there about eleven o'clock, with the day half gone, and would have to leave Mountain Grove at 5:55 in the afternoon, giving them very scant opportunity to visit even one of these institutions; that the people who came were men interested in poultry and fruit all over the State of Missouri and surrounding states.

W. S. Candler, President of the Commercial Club, Mayor of Mountain Grove, (p. 17) said: That Mountain Grove had two state institutions and visitors from all over the state and other states came to visit them and would like to put in a whole day but were unable to do so with the train service then given.

Fred Crosby, Assistant Secretary of the State Poultry Experiment Station, (Pp. 19, 20) said:

That this institution alone had approximately seven hundred visitors a year who registered at the Station, and a great many others came to visit the Station who did not register; that the majority of these visitors came in from Springfield and beyond; when train Number 105 stopped at Mountain Grove visitors, even from Kansas City, could get there at 1:55 a. m. and have all the next day for visiting the Poultry Station and the Fruit Station, but without this train stopping at Mountain Grove nothing like a day could be spent there; that visitors who stayed two or three days were exceptional, and since trains Number 105 and Number 106 were discontinued, people all over the state are asking how to get to Mountain Grove and he has to advise them that conditions are now that they can't; that most of the visitors to the Poultry Station came from the west, from points beyond Springfield, though many came from the south, some even from Florida; that the train service then furnished was very inconvenient for himself and his men and all of the Station's employees who travel; that in the fall, his duties with the Station kept him on the road about three-fourths of the time and the taking off of these trains was a matter of very great inconvenience.

(b) The size of the place and the extent and demand for transportation.

Gladson vs. Minnesota, 166 U. S. 427, l. c. 430, 431;

Lake Shore & Michigan Southern Railroad vs. Ohio, 173 U. S. 285, l. c. 301, 302, 303;

Atlantic Coast Line vs. Wharton, 207 U. S. 328, l. c. 335;

Chicago, Burlington & Quincy Ry. vs. Wisconsin Railroad Commission, 237 U. S. 220, l. c. 227, 228, 229.

On this point the evidence is as follows:

A. F. Collier, (Pp. 12, 13, 14, 15) said: That Mountain Grove is a town of twenty-five hundred people which draws a trade about thirty five miles north and northeast and about thirty-five miles south and southwest; that these people come to Mountain Grove for their freight and passenger train service, and unless these two trains stop at Mountain Grove passenger service is very inconvenient; that he made the trip to Springfield and return about once a month and always waited for the fast train when it stopped at Mountain Grove; that since these stops were dispensed with the other trains are badly crowded, many times women with babies in arms being compelled to stand up and not able to get a seat, with dozens of men standing, from Springfield as far down as Seymour if not to Mountain Grove; that he always took these trains when he had opportunity and there were always four or five passengers getting on or off at Mountain Grove, that train Number 106 was an advantage to the people of Mountain Grove

for Springfield business and in making connections from points out of Springfield anywhere; that in going to Bolivar or Lamar the fast train was the most convenient; that Mountain Grove is the distribution point for groceries and goods of all kinds for surrounding towns, and many people from the territory south and southwest come in to take train Number 106; that in the summer many boys and men from this territory, going west to help in the harvest fields, take train Number 106; that these fast trains should stop at Mountain Grove for the convenience of the people there and the people who came there; that the stopping of trains Numbers 105 and 106 would benefit the inhabitants of Mountain Grove in the train service furnished, to a greater extent than they are now benefited by the service of the other four trains, for the reason that without the fast trains stopping, the other four trains are overcrowded.

Fred Ellis, General Agent for the Franklin Life Insurance Company (Pp. 15, 16), said: That he had lived in Mountain Grove 36 years, traveled in and out covering about twenty-five counties, had a good many men there on business, is greatly inconvenienced in passenger service when trains Numbers 105 and 106 are not stopped; the other traveling men had made Mountain Grove their home and for years had enjoyed the service furnished by these fast trains being stopped there, but they

could not cover their territory with this lack of service and that he would have to move away where he could get better train service; that train Number 105 was a convenience to people having business in Springfield after eight o'clock in the evening; that an average of four or five passengers and many times a great many more, got off of train Number 105 at Mountain Grove; made the trip himself on an average of two or three times a month.

Jess Wheeler, resided in Mountain Grove seventeen years, and in the real estate business; (pp. 16, 17), said: That failure of the railroad to schedule trains Numbers 105 and 106 to stop at Mountain Grove was a great drawback to his business; that people come from the north and west and not finding Mountain Grove on the time card, frequently went on to Willow Springs, a town of less than half the population, where these trains did stop; that hardly a day passed that such a difficulty did not arise; that his business extended through advertising and correspondence over the northern and western states; that the stopping of these trains at Mountain Grove greatly facilitated the passenger service.

W. S. Candler, (pp. 17, 18) said: That he was familiar with the train service at Mountain Grove and did a great deal of traveling; that previous to the Railroad Company's order of November 17th the train service was fairly good from the fact that people could readily get in and out of town, but

the stoppage of trains Numbers 105 and 106, works a hardship in many ways; that returning from St. Louis an all-night wait is now necessary at Springfield and if the passenger is a traveling man out of Mountain Grove he must wait another day before he can go from Mountain Grove to West Plains, the next jobbing center; that people from Memphis, Tennessee, Washington, and other eastern points, have to come on Number 106 to Willow Springs and lay over there for the rest of the night and all the next day for the slow train to Mountain Grove, which inconvenience is now a frequent occurrence; that the failure to stop train Number 105 from the west is a great hardship on passengers and home-seekers from Kansas City and points beyond; that Mountain Grove has a wholesale grocery house doing an annual business of $300,000; that the egg, poultry and produce business will amount to $300,000 annually, flour and feed, $200-000, lumber $100,000, cattle, hogs, and mules, $100,000, the volume of banking business $800,000, grain and hay $100,000, and creamery products, including ice cream and soda water, amount to $900,000 a year; that the town has an overall factory employing about fifty girls; that a good Chautauqua is maintained during the summer, but with the fast trains not stopping at Mountain Grove, it is impossible for the talent to make other connections; that 150 passengers a month, at least, to and from

Mountain Grove, would be served by stopping trains Numbers 105 and 106, which passengers are not now served by other trains, and they would come from points beyond Springfield during all the year except in the dead of winter; that immigration is large and would be larger if these facilities were afforded; that these figures and estimates were given for the year 1918.

J. H. Livingston, Local Freight Agent for the Frisco at Mountain Grove for past twenty-six years (p. 18, said): That the previous service at Mountain Grove was a flag stop for Number 106 for passengers for Springfield or beyond, and for Number 105 for passengers for Memphis or beyond; that the percentage of stops of Number 105 was almost one hundred per cent, and Number 106 probably averaged three times a week for Springfield and beyond; that a great many people from Mountain Grove returned on Number 105 from Springfield.

L. W. Ellington, Night Watchman at Mountain Grove (p. 19) said: That prior to November 17, 1918, when these stops were called off, he met the passenger trains, and about as many got off Number 105 as the local train, couldn't see much difference, sometimes twelve or fifteen or maybe twenty, got off Number 105, most always five to ten or something like that, not so many got off of train Number 106, but nearly always someone, didn't remember that Number 105 missed stopping at Mountain

Grove but once in two years and a half while he was night man.

J. A. Lewis, a resident of Mountain Grove for eleven years, traveling salesman for the Springfield Grocery Company (pp. 20, 21) said: That he found it very inconvenient to get in and out of Mountain Grove without trains Numbers 105 and 106 stopping there, that he frequently had to go to Springfield on business and without the convenience of train Number 105, he would lose a day on the return trip; that about ten traveling men live in Mountain Grove and travel out from that point; that one of this number moved away after the fast train service was discontinued November 17, 1918, and the remaining salesmen find the present service very inconvenient.

Roy Treyom, Secretary, Mountain Grove Ice & Creamery Co. (p. 21) said: That their plant represented an investment of above $100,000, the creamery making in excess of one and one-half million pounds per year, the ice cream department making about 25,000 gallons a year, the bottling works making twelve or fifteen thousand cases of soda water; that one of the Company's sales managers and a traveling salesman live at Mountain Grove and since these fast trains are no longer stopped there, they are up against a hard proposition in getting in and out on business; that his company would get considerable more business to points in

Birmingham and beyond and would get much better results if their men could use the faster trains.

James Douglas, a hardware salesman, residing at Mountain Grove (pp. 21, 22) said: That the taking off of trains Numbers 105 and 106 had delayed his trips, causing him when in Springfield to lay over a whole night and lose half the next day coming to Mountain Grove; that his territory lay west of Springfield and that he made no local points between Springfield and Mountain Grove, also traveled south of Mountain Grove as far as Hardy, Arkansas.

Adolph Meyers, in hotel business at Mountain Grove (p. 22) said: That while trains Numbers 105 and 106 stopped there, it was customary nearly every morning to get passengers off of those trains, very seldom failed, sometimes one or two and sometimes seven or eight persons.

The whole record thus clearly demonstrates inadequacy of passenger train service furnished without stopping trains Numbers 105 and 106.

2. The service was inadequate in the light of adjudicated cases.

Consider first the cases cited on pages 12, 13, 14 and 15 of brief of Plaintiff in Error.

St. Louis-San Francisco R. Co. vs. Pub. Serv. Comm. 254 U. S. 335, l. c. 336.

In this case, Caruthersville, the town desiring the service, the court found was served by fourteen

local daily trains, seven each way, some of them making close connections with all through trains at Hayti. The court further found that in order to furnish the service desired, a detour from the main line requiring the keeping up of sixteen more miles of high standard track and a lengthening of the entire mileage by ten miles, would be necessary. No such elements appear in the case at bar.

Herndon vs. Chicago, R. I. & P. R. Co. 218 U. S. 135, l. c. 136, 137.

This case was a suit brought to enjoin the enforcement of a Missouri Statute requiring all trains to stop at junction points, and the particular town under consideration was Lathrop, a place of about one thousand inhabitants, which was served by three separate railroads, two of which already furnished four daily trains each, in each direction, and the third railroad furnished two daily trains each way. Naturally the court found that Lathrop already had ample passenger facilities, but no such service was furnished in the case at bar, and plaintiff in Error is the only railroad that passes through or near Mountain Grove, a town more than twice as large as Lathrop and of much greater relative importance.

Cleveland, C. C. & St. L. R. Co. vs. Illinois, 177 U. S. 514.

In this case four daily trains each way were stopped at Hillsboro, Illinois, a town which exceeded the population of Mountain Grove by less than one

thousand inhabitants. In the case at bar the facilities furnished were much less adequate in proportion to the population and importance of the place, but the statute declared invalid, not upon the ground of adequacy of service already furnished, but because it required each passenger train, regardless of the number of such trains passing each way daily and of the character of traffic carried by them, to stop at each county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic, may stop at the same station within a few minutes before or after the arrival of the train in question. The requirement of the statute was properly held to be unreasonable.

Atlantic Coast Line v. Wharton, 207 U. S. 328.

The court held in this case that several local trains each way, in addition to one daily through train each way, would be sufficient for Latta and Clio stations in South Carolina, with a population of about five hundred persons each. Apparently the service already there rendered was superior to that furnished Mountain Grove, though there could be no just comparison in point of size or importance between the places.

Mississippi R. Comm. vs. I. C. R. R. Co. 203 U. S. 335.

The court very properly held that three daily trains in each direction were sufficient for Magnolia,

Miss., a town of twelve hundred inhabitants, and the order granted in the case at bar gives no better service to Mountain Grove, a town more than twice as large and of much greater relative importance.

The case most nearly in point is one not cited by Plaintiffs in Error, namely, *Gulf, Colorado & St. Fe Ry. v. State of Texas*, 246 U. S. 58, decided in 1918 by Mr. Justice Holmes. It was a suit by the State to compel the railroad to stop two interstate trains at the city of Meridian for a time sufficient to receive and let off passengers. The town was a county seat of fifteen hundred population. Two other trains going each way were stopped there daily. The order of the Commission was in pursuance of the state law providing that "four trains each way carrying passengers for hire, if so many are run daily, Sundays excepted, be required to stop, as aforesaid, at all county seat stations". Competition was shown with other railroads having shorter routes and it was further shown that in order to keep contracts for the carriage of United States mails, these trains had to make fast time, and that there was little or no time to spare. However, the court declared that the service should be rendered, holding that (1. c. 61) "The law is not directed adversely at interstate trains but expresses the specific judgment of the legislature as to the needs of the county seats, all of which, of course, it knew. If its judgment is correct, which we have no grounds for denying, the order may

be justified, so far as its interference with interstate commerce, is concerned, unless some other fact shows that the burden is too great.*** We are not prepared to say that the finding there will be no unreasonable burden, is wrong".

IV.

The order is not a direct regulation of, an interference with, or an undue burden upon interstate commerce.

1. It does not regulate interstate commerce.

As ground for reversal, Plaintiffs in Error lay great store by the fact that the Commission's order stopped train Number 106, among other words, contains the following: "For the purpose of letting off passengers who board said train south of the Arkansas state line", by reason of which language they contend, it became an order directly regulating interstate commerce. The contention is without substance or merit. The order stopping train Number 106 further recites, "and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri", and the plain form, purpose, gist and effect of the order taken as a whole is to stop train Number 106 at Mountain Grove, thus operating upon the instrumentality used in interstate commerce and coming within the distinction observed by Plaintiffs in Error on pages 20-21 of their brief filed herein. The order would

have been a greater restriction upon Plaintiffs in Error if it had been made without qualification or condition, but if the Commission saw fit to limit or restrict the conditions under which the stop must be made, are Plaintiffs in Error in position to complain of the leniency? The court will regard substance rather than mere verbiage, and in this case perceive that both limitations contained in this order are *in aid of interstate commerce*, a thing approved in *N. Y. N. H. & Hartford R. vs. New York*, 165 U. S. 628, and quoted with approval in *Lake Shore & Mich. Southern vs. Ohio*, 173 U. S. l. c. 300:

"The statute in question is not directed against interstate commerce. Nor is it within the necessary meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, if it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the state to regulate the relative rights and duties of all persons and corporations within its limits".

Furthermore, the order is entirely proper under the facts in this case. The requirement that train Number 106 must stop at Mountain Grove to let off passengers who boarded said train at points south of the Arkansas line is not based upon an artificial test because it specifies a state line, but it arises out of the extent and nature of the passenger

traffic into Mountain Grove, and is a regulation reasonably adapted to the legitimate end sought, adequate local service at that town. The effect of the order is to regulate the instrumentality, that is, the train used in interstate commerce, and not interstate commerce itself, and there was no occasion for the order to be written otherwise, for "adequate and reasonable facilities" must include facilities for those from *without* the State who want to come *into* it, and those *in the State* who want to *go out of it*, at or from the station involved. This is declared to be the law in Lake Shore & Mich. Southern vs. New York, 173 U. S. l. c. 302, and there is ample evidence on this point to support the Commission's finding:

"It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and as far as practicable make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places in the State to places beyond its limits, or the convenience of those outside of the State who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those

who desired to pass through the State without stopping."

2. It does not directly interfere with interstate commerce.

The only effort made by Plaintiffs in Error to show any interference whatever with interstate commerce that would be occasioned by the Commission's order, was through two of its officials, and their testimony taken as a whole shows that the Commission's order would cause no interference whatever.

C. T. Mason, Assistant Superintendent of the St. Louis San Francisco Railway Company, in charge of the division in which Mountain Grove is located, relative to this phase of the case, (Pp. 23, 24, 25, printed transcript of record filed in this court) said: that, "If everything was favorable and nothing unusual took place, I think the five minutes could be regained between Mountain Grove and Memphis"; that, "A delay of five minutes in the running time of train Number 105 would not cause it to fail to make its connection at Memphis if it didn't have any other delay"; that, "If in addition to all of these stops between Kansas City and Memphis, train 105 stopped at Mountain Grove as a regular stop, this fact alone would not necessarily interfere with our connections at southern points if the train was on time".

J. N. Cornatzer, General Passenger Agent for the Director General of Railroads, St. Louis-San Francisco Railway—relative to this matter (pp. 28, 29) said: "Can't say that I remember of a single instance when we missed our connection at Kansas City with the Rock Island train prior to November 17, 1918, from the reason for having had to stop at Mountain Grove"; and, "It is a general rule among railroads that where the delays are not too great they will wait for their connections."

The evidence as a whole, fully justified the Commission in finding and concluding on this phase of the case that the train schedule was so arranged at that time as to permit both trains to stop at Mountain Grove and upon their regular schedule, gain sufficient speed to make up the time thus lost and meet all connections.

3. It is not an undue burden on interstate commerce.

Insofar as interference with connections constitute an "undue burden", this phase of the case is disposed of in paragraph 2, supra. No effort whatever was made by Plaintiffs in Error to show that any substantial financial burden was imposed by the order. As a matter of fact, the cost of stopping these trains is so little as to be inconsequential.

Under the evidence the Commission's order is not a direct regulation of, interference with, or an undue burden upon, interstate commerce, and hence

it does not lie with the Plaintiffs in Error to suggest that some means, other than the stopping of these trains, be adopted to render the service at Mountain Grove adequate.

V.

The order is valid against Plaintiff in Error, St. Louis-San Francisco Railway Company.

The order of the Commission is in the nature of a special law. It is legislative in character, and prospective in operation. The power of the Commission, as a state body, to make the order here in issue, was permitted by the Federal authority under the proviso found in section 15 of the Federal Control Act which is as follows:

> "That nothing in this Act shall be construed to amend, appeal, impair or affect the existing laws or powers of the states in relation to taxation or the lawful police regulations of the several states, except wherein such laws, powers, of regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds".

This provision was construed by the Director General of railroads as leaving transportation systems under Federal control subject to the orders of state commissions, in respect to certain matters

having to do with local safety, convenience and the like. This appears from the provisions of General Order No. 58, issued by the Director General under date of February 20, 1919.

The control of the Director General was one arising solely out of the extraordinary emergency created by the war. The St. Louis-San Francisco Railway Company remained the owner of the property. The order constituted a regulation for the future, to be observed by whatsoever authority, or ownership the property should be operated. The Director General, the party then in control of the property, and the company as the owner, and prospectively to be again in control of the property, were made parties to the proceeding. The company appeared, and defended, and by the conjoint defense of the Director General and of the company, every fact shown, and every issue raised having to do with the merits. The proceeding was not judicial, but in every substantial sense the company had its "day in court." Every interest, existing or prospective, governmental or proprietary, was heard.

But the essential thing is that the order is a police regulation, is legislative in character, and is prospective in operation. On this account the provisions concerning the bringing of ordinary suits against the Director General in court, at law or in equity, and the decisions construing those provisions, have nothing whatever to do with the issues here

under consideration. Neither do the decisions in Northern Pacific Railroad Company vs. North Dakota, 250 U. S. l. c. 148, and Missouri Pacific R. Co. vs. Ault, 256 U. S. 554, have any bearing upon the issue here. The order, if valid when made, is valid now, and will continue to be valid against any person or company operating the property, until changed by the authority having supervision over the subject.

For the reasons above set forth and such other reasons as may be gathered from the record in the case, the judgment of the Supreme Court of the State of Missouri affirming the order of Defendant in Error should be affirmed.

Respectfully submitted,

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Office Supreme Court, U. S.
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Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads, etc.,
Plaintiffs in Error,
v.
PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Defendant in Error.
} No. 284.

In Error to the Supreme Court of the State of Missouri.

BRIEF OF PLAINTIFFS IN ERROR.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and JAMES C. DAVIS, Director General of Railroads, etc., Plaintiffs in Error, v. PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.	No. 284.

In Error to the Supreme Court of the State of Missouri.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

(Figures in parentheses indicate page of Record.)

An order of the Public Service Commission of Missouri, requiring two interstate passenger trains operated on St. Louis-San Francisco Railway and running between Kansas City, Missouri, and Birmingham,

Alabama, to be stopped at the City of Mountain Grove, Missouri, to take on and discharge passengers at that point, was upheld on appeal by the Circuit Court of Cole County Missouri (5), and finally affirmed (63) by the Supreme Court of Missouri. The proceedings originated by the Commercial Club of Mountain Grove, a voluntary organization of citizens of that city, filing with defendant in error a complaint (7) asking that said trains, Nos. 105 and 106, be regularly stopped at Mountain Grove. When the complaint was filed and when the order was entered by defendant in error, the railroad of St. Louis-San Francisco Railway Company was being operated by the Director General of Railroads appointed by the President (8).

The order complained of (35) required:

> 1. The stopping of southbound train No. 105 at Mountain Grove for the purpose of taking on and discharging passengers at that point; and,
>
> 2. The stopping of northbound train No. 106 at Mountain Grove on flag or signal for the purpose **of letting off passengers who board said train at points south of the Arkansas state line,** and for the purpose of taking on passengers holding tickets for points beyond Springfield, Missouri.

Throughout the entire proceedings the point was made and preserved that the order of defendant in

error was in violation of Section 8 of Article I of the Constitution of the United States in that it constituted a regulation of, interference with and burden upon interstate commerce, as will be seen by reference to the motion for rehearing filed with defendant in error (36), the motion for new trial in the Circuit Court (37-38), and the opinion of the Supreme Court of Missouri (45-48; also 235 Southwestern Reporter 131).

The judgment of the Circuit Court was at first affirmed by one of the divisions of the Supreme Court of Missouri (42), but on transfer to the Court en banc the Court was equally divided, a special judge was ordered (62), and the judgment of the Circuit Court was affirmed (63).

In finally affirming the case the Supreme Court of Missouri held (45-48):

> "2. The question of whether or not the order of the commission as affirmed by the Circuit Court imposes an undue burden upon interstate commerce is a vital one to be determined under the facts in this case; * * * and the facts are ample to justify the order made.
>
> "3. The constitutional questions raised are not applicable under the facts and it is, therefore, unnecessary to pay further attention to them.
>
> "4. The proceedings had in the case were against both the railroad company and Walker

> D. Hines, Director General thereof, who at the time was operating said railroad in pursuance of an Act of Congress of March 21, 1918. Section 10 of said Act * * * clearly authorizes the bringing of suits against the carrier, either at law or in equity, and the rendition of judgments therein, and prohibits the carrier from making the defense thereto that it is an instrumentality or agency of the Federal Government, and it is manifest that the exceptions mentioned therein have no application here. The order is a continuing one until lawfully changed, and * * * would apply to the railroad company."

The petition for writ of error (66-67) alleged the succession of plaintiff in error, James C. Davis, to Walker D. Hines, as Director General of Railroads, and the due substitution in the Supreme Court of Missouri of said James C. Davis in lieu of said Walker D. Hines as party appellant in said court, and further alleged that the adjudication by said Supreme Court of Missouri by its final judgment that the order of defendant in error is not in violation of the provisions of Section 8 of Article I of the Constitution of the United States, was manifest error to the damage of plaintiffs in error.

SPECIFICATION OF ERRORS.

I.

The Court erred in its decision and judgment in upholding as legal and valid the order of defendant in error, and in holding and adjudging that said order did not, and does not, constitute a regulation of, interference with or burden upon interstate commerce, contrary to the provisions of Section 8 of Article I of the Constitution of the United States, and in holding that the constitutional questions raised are not applicable under the facts.

II.

The Court erred in its decision and judgment in upholding as legal and valid the order of defendant in error as against St. Louis-San Francisco Railway Company, plaintiff in error, and in holding and adjudging that Section 10 of the "Federal Control Act" of March 21, 1918, authorized the bringing of the proceeding and the rendition of judgment (order) therein against said railway company, plaintiff in error, and that the order is a continuing one until lawfully changed and would apply to the railway company.

BRIEF OF THE ARGUMENT.

I.

The order of defendant in error affirmed by the Supreme Court of Missouri constitutes a regulation of, an interference with and an undue burden upon interstate commerce, in violation of Section 8 of Article I of the Constitution of the United States.

Mississippi R. R. Com. v. Illinois Central R. Co., 203 U. S. 335;

Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328;

Chicago B. & Q. R. Co. v. Wisconsin R. R. Com., 237 U. S. 220;

St. Louis-San Francisco R. Co. v. Pub. Serv. Com., 254 U. S. 535;

Herndon v. Chicago, R. I. & P. R. Co., 218 U. S. 135;

Kansas City Southern R. Co. v. Kaw Valley Drainage District, 233 U. S. 75;

Illinois Central R. Co. v. Illinois, 163 U. S. 142;

Cleveland, C. C. & St. L. R. Co. v. Illinois, 177 U. S. 514;

McNeill v. Southern R. Co., 202 U. S. 543;

Hall v. De Cuir, 95 U. S. 485;

Wabash, St. L. & P. R. Co. v. Illinois, 118 U. S. 557;

South Covington & C. S. R. Co. v. Covington, 235 U. S. 537;

In re Rahrer, 140 U. S. 545;
County of Mobile v. Kimball, 102 U. S. 691;
Bowman v. Chicago & N. W. R. Co., 125 U. S. 465;
Heisler v. Thomas Colliery Co., 43 Sup. Ct. Reporter 83.

(a) Mountain Grove has reasonable passenger facilities aside from the two interstate trains, Nos. 105 and 106, involved in the order. If the local train facilities are deficient in schedule or equipment, there is an easy remedy by means other than burdening interstate commerce by stopping these two fast interstate trains.

(b) The order destroys or seriously affects the interstate connections of plaintiffs in error at Kansas City, Missouri; Memphis, Tennessee, and Birmingham, Alabama.

(c) The requirement of the order that northbound train No. 106 be stopped at Mountain Grove "for the purpose of letting off passengers who board said train at points south of the Arkansas state line" is a direct regulation of interstate commerce.

The foregoing propositions will be discussed in their order with such statement of facts as is necessary to a proper understanding thereof. That the Court may have a general idea of the questions involved a brief statement of facts is necessary, reserv-

ing for the consideration of the several propositions advanced a statement of such facts as are immediately pertinent thereto.

Mountain Grove, Missouri, is located about 68 miles southeast of Springfield, Missouri, on the line of St. Louis-San Francisco Railway extending from Kansas City, Missouri, through Springfield, to Memphis, Tennessee, and thence to Birmingham, Alabama. It has a population of about 2,200 (18). Trains Nos. 105 and 106, which the order of defendant in error required to be stopped at Mountain Grove, are known as the Kansas City-Florida Special, and are operated between Kansas City, Missouri, Memphis, Tennessee, and Birmingham, Alabama; they are fast through interstate trains and are operated for long-distance traffic (25). In addition to these two trains, four other passenger trains are operated daily on said line of railroad through Mountain Grove, two northbound and two southbound, all of which stop at Mountain Grove. These four trains are also interstate trains, and are operated between Kansas City, Missouri, and Memphis, Tennessee. The complaint (7) assigned as the justification for the relief prayed that the failure of trains 105 and 106 to stop at Mountain Grove, as they sometimes did prior to about November 17, 1918, for passengers to or from Springfield on the west and to or from certain points south, was to the detriment of complainant and of the City of Mountain Grove.

The numbers and schedules of the four daily regular passenger trains serving Mountain Grove, above referred to, are as follows:

Train 103 southbound leaves Springfield at 7:50 a. m. and stops at Mountain Grove at 10:30 a. m. (23).

Train 101 southbound leaves Springfield at 8 p. m. and stops at Mountain Grove at 11:05 p. m. (22).

Train 102 northbound stops at Mountain Grove at 4:45 a. m. and arrives at Springfield at 7:50 a. m. (23).

Train 104 northbound stops at Mountain Grove at 5:55 p. m. and arrives at Springfield at 8:30 p. m. (23).

These four trains also serve all points south of Mountain Grove in Missouri and Arkansas between Mountain Grove and Memphis, Tennessee, and all points north of Mountain Grove in Missouri and Kansas between Mountain Grove and Kansas City, Missouri.

(a) **Mountain Grove has reasonable passenger facilities aside from the two interstate trains, Nos. 105 and 106, involved in the order. If the local train facilities are deficient in schedule or equipment, there is an easy remedy by means other than burdening interstate commerce by stopping these two fast interstate trains.**

"The term 'adequate or reasonable facilities' is not in its nature capable of exact definition.

> It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost."
>
> Atlantic Coast Line v. Wharton, 207 U. S. 328, l. c. 335.

As shown by the above train schedules, Mountain Grove has four daily interstate passenger trains, two northbound and two southbound. It has a population of about 2,200 persons. The complaint seeks to have trains 105 and 106 stopped at Mountain Grove to afford additional local train facilities between Mountain Grove and Springfield. The burden of the evidence tends to show that the particular ground of complaint is that train 101, leaving Springfield at 8 p. m., is nearly always crowded and passengers have to stand as far down as Seymour, between Springfield and Mountain Grove (12, 15); that train 105, leaving Springfield at 11:35 p. m., and passing through Mountain Grove at 1:34 a. m., would be a more convenient train because it could be used by people having business in Springfield after eight o'clock in the evening (16); that train 106, passing

through Mountain Grove at 2:45 a. m. and arriving at Springfield at 4:35 a. m., would be a better train than 102, passing through Mountain Grove at 4:45 a. m. and arriving at Springfield 7:50 a. m., "to be sure of getting to Springfield and you don't have so much trouble in waiting and stopping at every little station; a fellow likes to be in a hurry and get there" (22).

As to the extent of the demand for additional train service at Mountain Grove, the evidence showed that about 150 passengers a month to and from Mountain Grove would be served by the stopping of trains 105 and 106 which are not now served by the other trains, an average of five per day (18).

In the Wharton case, supra, the same character of complaint was lodged against the Railroad Company, and this Court, in discussing the reasonableness of an order requiring trains to stop at towns through which they already ran, said, l. c. 335:

> "That the inhabitants of a place demand greater facilities than they have is not at all conclusive as to the reasonableness of their demand for something more. Fault is found here with the character of some of the local trains, in that the appointments thereof are not up to a sufficiently high standard. It is true that included in these eleven trains were some which were a combination of freight and passenger, and others

> which only ran between Latta and Clio, and those are described as dirty and without proper closets and drinking tanks. **These deficiencies are remediable by other means than the stoppage of the two trains in question.''**

If the local passenger facilities already afforded the City of Mountain Grove by the four regular passenger trains referred to above were inadequate because deficient in schedule or equipment, these deficiencies, as stated in the Wharton case, are remediable by other means than the stoppage of the two trains in question; and plaintiffs in error should have been given an opportunity to furnish additional passenger service or to remedy the deficiencies in the existing service without being required to stop these two interstate trains at Mountain Grove.

See also:

> St. Louis-San Francisco R. Co. v. Pub. Serv. Com., 254 U. S. 535, l. c. 536.

The passenger train service afforded Mountain Grove was adequate, considering the size of the place and the extent of the local demand for transportation; and the order of defendant in error requiring the stoppage at that point of the two interstate trains here involved is an unlawful regulation and burden upon interstate commerce.

"Where a railroad company has already provided ample facilities for the adequate accommodation of the traveling public, such as may be proper and reasonable at any given point, and operates interstate commerce trains, carrying passengers through the same places, at which such interstate trains do not stop, a state regulation which requires the stopping of such interstate trains, in addition to ample facilities already provided, to the detriment and hindrance of interstate traffic, is an unlawful regulation and burden upon interstate commerce."

Herndon v. Chicago, R. I. & P. R. Co., 218 U. S. 135, l. c. 136, 137.

Reference to some of the cases decided by this Court involving the illegality of orders of state authorities requiring interstate trains to stop at certain points within their jurisdictions may not be amiss at this point in determining the injustice of the order in this case. The cases are as follows:

In Cleveland, C. C. & St. L. R. Co. v. Illinois, 177 U. S. 514, four trains each way stopped at Hillsboro, Illinois, a city with a population of 3,424. A fast through train was operated through Hillsboro and did not stop at that point. The Court had under consideration a statute of Illinois requiring all passenger trains to stop at county seats, and held that the statute was invalid and that the railroad company need not stop its through train at Hillsboro.

In Atlantic Coast Line v. Wharton, 207 U. S. 328, the Court held that two regular passenger trains would be sufficient for Latta and Clio, stations in South Carolina, with populations each of about 500 and thickly settled territory surrounding them.

In Mississippi R. R. Com. v. Illinois Central R. Co., 203 U. S. 335, the Court held that three daily trains in one direction were sufficient for Magnolia, Mississippi, a city of 1,200 inhabitants, and that it would be unreasonable to require fast interstate trains to stop at that point.

In Herndon v. Chicago, R. I. & P. R. Co., 218 U. S. 135, it was held that two daily passenger trains each way, and one local freight each way regularly carrying passengers, were sufficient service for Lathrop, Missouri, with a population of 1,000.

> "While * * * railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise, but who may have contributed largely to the construction of the road, they are bound to do no more than this, and may then provide special facilities for the accommodation of through traffic. * * * After all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that

provision of the Constitution which we have held requires that commerce between the states shall be free and unobstructed."

Cleveland etc. R. Co. v. Illinois, 177 U. S. 514, l. c. 521, 522.

(b) **The order destroys or seriously affects the interstate connections of plaintiffs in error at Kansas City, Missouri, Memphis, Tennessee, and Birmingham, Alabama.**

Trains 105 and 106 are fast through interstate trains operated to handle long-distance traffic. During the winter months train 105 handles Pullman sleeping cars from Kansas City, Missouri, to Jacksonville, Florida, via Birmingham, Alabama, and the Southern Railway. During the summer months train 106 handles sleeping cars from Florida to Kansas City, whence they run via the Rock Island Railway to Denver, Colorado. These trains also handle sleepers between Springfield, Missouri, and Birmingham, Alabama, and a local sleeper between Kansas City and Memphis (25). These trains are operated upon as fast a schedule as possible consistent with safety in order to make connections with other roads at Kansas City, Memphis and Birmingham. They necessarily have local service as well as through service, and in performing this service are required to make approximately twenty stops, including sta-

tion stops and railroad grade crossing stops, between Kansas City and Birmingham (24-25). The connections at Birmingham and Kansas City are absolutely arbitrary, and it is not possible for the connections at Kansas City to change without affecting other big terminals. If the connections with the Southern Railway at Birmingham should be broken, there would not be sufficient traffic between Kansas City and Memphis to operate the trains between Memphis and Birmingham (26).

Train 106 is due to arrive at Kansas City at 10:25 a. m. and its first and most important connection there is Rock Island train No. 25, leaving Kansas City at 10:35 a. m., which is the train receiving the sleeper for Colorado from train 106 during the summer months. The next connections are Union Pacific train No. 2, leaving Kansas City at 10:40 a. m., and Santa Fe train No. 1, leaving Kansas City at 10:55 a. m. (25-26).

Train 105 arrives at Memphis at 8:10 a. m., and its most important connection there is Southern train No. 24, leaving at 8:30 a. m. from the Union Station, about three blocks distant from the Frisco Station; the next connections at Memphis are Illinois Central No. 123, leaving at 8:15 a. m., Illinois Central No. 103, leaving at 9:25 a. m., and Rock Island No. 45, leaving at 9:30 a. m. (26). Train 105 arrives at Birmingham at 4:20 p. m. Its first connection there

is L. & N. No. 3, leaving at 4:20 p. m. from a separate station; then Central of Georgia No. 10, leaving at 4:25 p. m., and Southern Railway No. 24, leaving at 4:35 p. m., from the same station train 105 enters (26).

The elimination of the flag stops of these two trains at Mountain Grove was for the purpose of enabling them to make their connections at the large terminals at Kansas City, Memphis and Birmingham, and the fact that the trains did not stop at Mountain Grove helped the service (27-28).

The inconvenience to through passengers carried on these trains, the failure of the trains to make their advertised and scheduled connections at terminals, and the consequent loss of patronage, resulting from the stopping of these trains at Mountain Grove, should not be put out of view in affording the citizens of Mountain Grove their desired passenger train service.

> "The order cannot be viewed alone in the light of ordering a stop at one place only, which might require not more than three minutes, as asserted. It is the question whether these trains can be stopped at all at any particular station when proper and adequate facilities are otherwise afforded such station. If the commission can order such a train to be stopped at a particular locality under such circumstances, then it could do so as to other localities, and in that

way the usefulness of a through train would be ruined and the train turned from a through to a local one in Mississippi. The legislature of a state could not itself make such an order and it cannot delegate the power to a commission to do so, in its discretion, when adequate facilities are otherwise furnished."

Mississippi R. R. Com. v. Illinois Central R. Co., 203 U. S. 335, l. c. 346.

"To stop these trains at Latta, and other stations like it, which could bring equally strong reasons for the stoppage of the trains at their stations, would wholly change the character of the trains, rendering them no better in regard to speed than the other trains, 39 and 40, and would result in the inability of what had been fast trains to make their schedule time, and a consequent loss of patronage, also the loss of compensation for carrying the mails, which would be withdrawn from them, and the end would be the withdrawal of the trains, because of their inability to pay expenses. All these are matters entitled to consideration when the question of convenience and adequate facilities arises."

Atlantic Coast Line v. Wharton, 207 U. S. 328, l. c. 336, 337.

"Of course, there would be some convenience at times in two extra trains—indeed, in more than two—and they may be desired; but desire

is not a test of requirement, nor is convenience, absolutely considered. There is a traffic to be considered which does not originate at Cochrane and its convenience cannot be put out of view."

Chicago, B. & Q. R. Co. v. Wisconsin R. R. Com., 237 U. S, 220, l. c. 229.

(c) **The requirement of the order that northbound train No. 106 be stopped at Mountain Grove "for the purpose of letting off passengers who board said train at points south of the Arkansas state line" is a direct regulation of interstate commerce.**

The requirement of the order of defendant in error that northbound train No. 106 be stopped at Mountain Grove on flag or signal **"for the purpose of letting off passengers who board said train at points south of the Arkansas state line,"** is a direct regulation of interstate commerce, that is to say, passenger traffic coming **into** the State of Missouri from points **without** that State; and hence, is void because in violation of the commerce clause of the Federal Constitution.

The complaint in the proceedings before defendant in error which resulted in the order, the validity of which is now under review, was not founded upon inadequate or insufficient **interstate** facilities; on the contrary, the burden of the evidence tends to show

that the particular ground of complaint was inadequate local facilities for travel between Mountain Grove and Springfield, Missouri.

A complaint of like character was lodged against the railway company in Chicago, B. & Q. R. Co. v. Wisconsin R. R. Com., 237 U. S. 220. In that case the Court had under review a judgment of the Supreme Court of Wisconsin sustaining an order of the railroad commission of that State requiring under a law of the State the railroad company to stop two of its interstate passenger trains, each way daily, at the station of Cochrane. In considering the character of the complaint, the Court said, l. c. 228:

> "The record, however, contains no complaint of insufficient interstate facilities. The complaint which induced the proceeding before the railroad commission was of the deficiency of local facilities."

Nothwithstanding there is here no complaint of insufficient interstate facilities, the order of defendant in error undertakes to regulate interstate commerce by requiring the stopping of train 106 at Mountain Grove "to let off passengers who board said train at points south of the Arkansas state line." This Court has uniformly drawn a distinction between the regulation of commerce among the several states and the

regulation of the local aids or instruments used in such commerce.

County of Mobile v. Kimball, 102 U. S. 691, l. c. 702;
South Covington, etc. R. Co. v. Covington, 235 U. S. 537, l. c. 547, 548.

The order of defendant in error in the phase now being considered does not operate upon the instrumentality used in interstate commerce, that is, train No. 106, after coming within the State of Missouri, in respect of furnishing additional local facilities at Mountain Grove, assuming that the local facilities at said point were inadequate, but operates directly upon passenger traffic brought from points **without** the State of Missouri to a point **within** that State. This is a direct regulation of interstate commerce, and is beyond the power of the State, whether acting directly or through the instrumentality of an administrative agency. In the Wharton case, supra, the Court said, l. c. 334:

"That any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution is obvious. It hence arises that any command of a state, whether made directly or through the instrumentality of a railroad commission which orders,

> or the necessary effect of which is to order, the stopping of an interstate train at a named station or stations, if it directly regulates interstate commerce, is void.'

It is immaterial that Congress may not have enacted legislation touching the regulation of passenger traffic among the several states; the power to regulate such commerce is committed solely and exclusively to Congress, and its inaction, as repeatedly said by this Court, "is equivalent to a declaration that interstate commerce shall remain free and untrammelled" by state legislation.

In Hall v. De Cuir, 95 U. S. 485, the Court had under consideration a statute of the State of Louisiana which required those engaged in interstate commerce to give all persons traevling within that state upon public conveyances equal rights and privileges in all parts of the conveyance without distinction or discrimination on account of race or color. In holding that the statute was a regulation of interstate Commerce, and hence unconstitutional and void, the Court said (l. c. 488-490):

> "It (the statute) does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without or goes out from within. While it purports only to control the carrier

when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the Constitution was adopted. * * * If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. * * * Commerce cannot flourish in the midst of such embarrassments. * * * Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. * * * This power of regulation may be exercised without legislation as well as with it. * * * In fact, congressional legislation is only necessary to cure defects in existing laws, as they are discovered, and to adapt such laws to

> new developments of trade. As was said by Mr. Justice Field, speaking for the court in Welton v. The State of Missouri, 91 U. S. 282: 'Inaction (by Congress) * * * is equivalent to a declaration that interstate commerce shall remain free and untrammelled.' "

In South Covington, etc. R. Co. v. Covington, 235 U. S. 537, the Court had under consideration an ordinance of the City of Covington, Kentucky, regulating the operation of street cars of the railway company. In holding certain provisions of the ordinance, limiting the number of passengers to be transported within the cars, and prescribing the number of cars to be operated within the City of Covington, unconstitutional as directly burdening and regulating interstate commerce, and hence beyond the power of the state, the Court again drew the distinction between state regulations of the instrumentalities of interstate commerce which are valid under the police power of the state, because involving questions of the health or safety of passengers, and regulations which, like the order of defendant in error, attempt to control interstate commerce itself; and reaffirmed the exclusive power of Congress to prescribe regulations touching interstate commerce, and said (l. c. 548):

> "We need not stop to consider whether Congress has undertaken to regulate such interstate

transportation as this, for it is clearly within its power to do so, and absence of federal regulation does not give the power to the state to make rules which so necessarily control the conduct of interstate commerce as do those just considered."

The motive of defendant in error in making the order under review is immaterial. Its invalidity does not depend upon the degree of interference with interstate commerce. It is a direct regulation of interstate commerce, and hence is void. As said by this Court in the recent case of Heisler v. Thomas Colliery Co., 43 Sup. Ct. Reporter 83:

> "Whether any statute or action of a state impinges upon interstate commerce depends upon the statute or action, not upon what is said about it or the motive which impelled it. * * * The action of the state as a regulation of interstate commerce does not depend upon the degree of interference; it is illegal in any degree."

II.

The order of defendant in error affirmed by the Supreme Court of Missouri is void as against plaintiff in error, St. Louis-San Francisco Railway Company.

Northern Pacific R. Co. v. North Dakota, 250 U. S. 135;
Missouri Pacific R. Co. v. Ault, 256 U. S. 554.

The order of defendant in error sustained by the judgment of the Supreme Court of Missouri under review was made against both the Director General of Railroads and the Railway Company. The proceedings before defendant in error which resulted in the order were had on the theory, and the record conclusively shows, that at the time of the filing of the complaint, at the time of the hearing before defendant in error, and at the time of the making the order, the railroad and trains affected by the order were being controlled, managed and operated exclusively by the Director General of Railroads appointed by the President of the United States, and that the Railway Company had nothing to do with the control, management or operation of said railroad or of said trains, having been completely ousted from such control, management and operation by the act of the President in taking over and assuming control of said railroad. The management, control and operation of said railroad and trains was not a divided one between the Federal Government and the corporate owners, but was complete, entire and exclusive in the Federal Government. Hence, no valid, legal or binding order could be made by defendant in error as against the Railway Company in respect of the operation of the railroad and trains in question, and no judgment sustaining such an order could be rendered as against the Railway Company.

In speaking of the nature of the possession and control assumed by the Federal Government through the President in taking possession of the railroads in the United States by his proclamation of December 26, 1917, this Court, in Northern Pacific R. Co. v. North Dakota, 250 U. S., l. c. 148, said:

> "No elaboration could make clearer than do the Act of Congress of 1916, the proclamation of the President exerting the powers given, and the Act of 1918 dealing with the situations created by the exercise of such authority, that no divided but a complete possession and control were given the United States for all purposes as to the railroads in question. But if it be conceded that despite the absolute clarity of the provisions concerning the control given the United States, and the all-embracing scope of that control, there is room for some doubt, the consideration of the general context completely dispels hesitancy. How can any other conclusion be reached if consideration be given the comprehensive provisions concerning the administration by the United States of the property which it was authorized to take, the financial obligations under which it came and all the other duties and exactions which the act imposed, contemplating one control, one administration, one power for the accomplishment of the one purpose, the complete possession by governmental authority to replace for the period provided the private ownership theretofore existing?"

The order of defendant in error contemplates and is based on a situation existing during the period of Federal control of railroads. Since, at the time the order was entered, the Railway Company had been completely ousted from the management, control and operation of its railroad and the trains in question, no valid and binding order could have been made against it in respect of said railroad and trains. The Railway Company had been deprived of ability to comply with the order by the act of the Federal Government in assuming charge, control and management of the railroad. The Supreme Court of Missouri erroneously held that Section 10 of the "Federal Control Act" of March 21, 1918, authorized the bringing of the proceedings and the making of the order of defendant in error against the Railway Company, and that said order was valid, legal and binding as against the Railway Company.

Missouri Pacific R. Co. v. Ault, 256 U. S. 554.

It is respectfully urged that the judgment of the Supreme Court of Missouri be reversed.

WILLIAM F. EVANS,
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ALEXANDER P. STEWART,
Counsel for Plaintiffs in Error.